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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 193.

RAMON VALDES, APPELLANT,

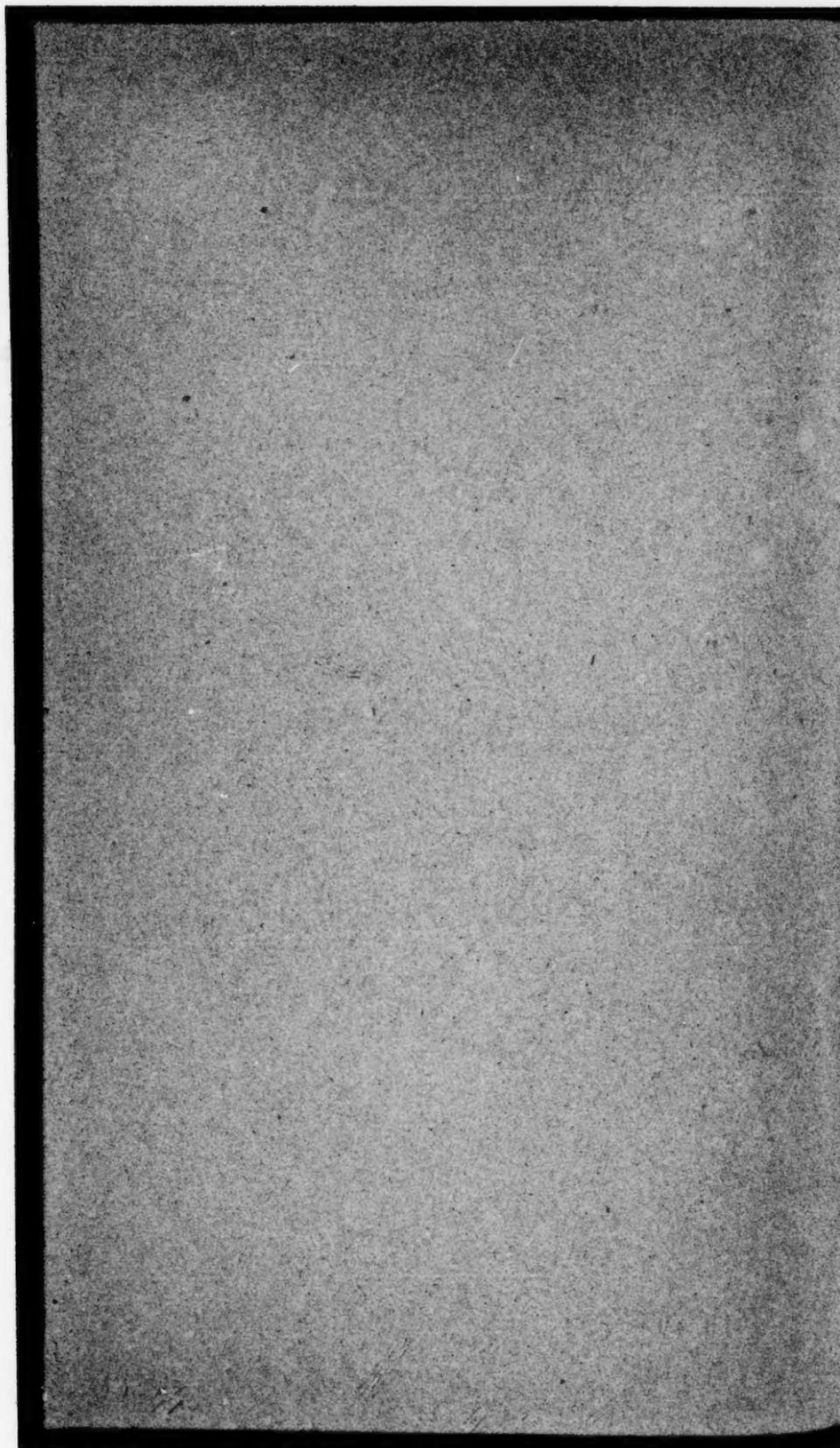
vs.

CENTRAL ALTAGRACIA, INCORPORATED, AND NEVERS
& CALLAGHAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
PORTO RICO.

FILED JANUARY 28, 1910.

(21,984.)



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1 THE UNITED STATES OF AMERICA,
District of Porto Rico, ss:

At a stated term of the District Court of the United States for Porto Rico, within and for the district aforesaid, begun and held at the Court rooms of said Court in the City of San Juan, on the second Monday of October, being the eleventh day of that month, in the year of our Lord One Thousand nine hundred and nine, and of the Independence of the United States of America the one hundred and thirty-fourth.

Present, the Hon. Bernard S. Rodey, Judge.

Among the proceedings had was the rendition of a Final Decree in the following case, to wit:

No. 564. In Equity.

RAMÓN VALDÉS
vs.

CENTRAL ALTAGRACIA, INCORPORATED, and NEVERS & CALLAGHAN.

Consolidated with

No. 565. In Equity.

CENTRAL ALTAGRACIA, INCORPORATED,
vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Be it remembered, that heretofore, to wit: on the second day of June, 1908, came the Complainant by his attorneys and filed his Bill of Complaint in this cause, which said Bill is as follows, to wit:

RAMÓN VALDEZ
vs.
CENTRAL ALTAGRACIA, INCORPORATED,

Petition for Receivership.

2 To the Hon. Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico:

Ramon Valdez, a subject of the King of Spain, and a resident of Porto Rico, respectfully brings this, his Bill of Complaint against the Central Altagracia, Incorporated, a corporation organized and existing under and by virtue of the laws of the State of Maine, U. S. A.,—and says:

I.

That your orator now is, and during all of the time hereinafter mentioned was, a subject of the King of Spain and a resident of the Island of Porto Rico.

II.

That the defendant now is, and during all of the times hereinafter mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of Maine, U. S. A., and doing business in Porto Rico.

III.

That heretofore, to wit, on or about the 2nd day of November, 1907, your orator and the said Defendant entered into a contract of conditional sale at the city of New York, State of New York, U. S. A., by virtue of which contract your orator conditionally sold, assigned and transferred to the said Defendant:

(1) All of his right, title and interest in and to a certain lease of certain premises, more particularly described, as follows, to wit:

That certain lease of the sugar-factory known as the "Central Altagracia," situate, lying and being near the City of Mayaguez, in the jurisdiction of Mayaguez, Island of Porto Rico, together with certain machinery for the manufacture of sugar then, at that time, being in and forming part of said factory, together also with Twenty-two (22) cuerdas of land upon which the said factory is built and which pertain, and are next, to and immediately surrounding the said factory, executed at Paris, France, on or about the 18th day of January, 1905, by Joaquin Sanchez de Larra-goiti and in favor of Salvador Castelló, of Mayaguez, Porto Rico.

(2) All of his right, title and interest in and to certain machinery for the manufacture of sugar at the date of the said contract belonging to and being the property of said Plaintiff, and being in the said factory, and which had been placed therein by the said Defendant. A copy of which said contract, together with its correct translation into the English language is hereto annexed, marked Exhibit "A," and prayed to be considered and taken as part of this Bill.

IV.

That, however, it was expressly provided in and by the terms of the aforesaid contract of conditional sale of November 2, 1907, that the title in and to the aforesaid lease and machinery should not pass and be conveyed and transferred to the said Defendant, but should belong to and remain in your orator until the said Defendant had fully complied with and performed certain conditions upon it imposed by the said contract. That among the said conditions was the payment of the full amount of the purchase-price of the said lease and the said machinery, and which amount was the sum of \$65,000,000, payable in four (4) equal instalments, due, respectively, on the first day of April of each of the years of 1908, 1909, 1910 and 1911, together with interest at the rate of Ten (10) per cent., per annum, on all deferred payments, and which interest was payable every six (6) months, and to be compounded at such times if not paid.

V.

That it was further provided by the terms of the aforesaid contract that should the Defendant be unable to pay any of the afore-

said instalments when due the said Plaintiff would be obliged to extend the time for the payment of the said instalment for 4 the further term of one year; provided, however, that the interest due on account of the total sum then owing by the Defendant, as aforesaid, should be or was paid.

VI.

That it was further provided by the terms of the aforesaid contract that should the Defendant fail to keep and observe any of the conditions by it to be kept and observed according to the terms of the said contract, and especially should the said Defendant make default of the payment of interest when due, or any of said instalments when due, then the said Plaintiff would immediately and ipso facto be entitled to re-enter into and take possession of the said factory, and the said premises, and the said machinery, and the said contract of lease, as the true, lawful and exclusive owner of the same.

VII.

That by virtue of the said contract of November 2, 1907, the said Defendant went into possession of the said premises and factory, and took possession of the said machinery and said contract of lease, and still continues to occupy and hold the same.

VIII.

That according to the terms of the said contract there became due on the first day of April, 1908, the first of the instalments above-mentioned, amounting to \$16,250.00, together also with the interest aforesaid on the total sum of \$65,000.00 from the date of the aforesaid contract; but that the Defendant has failed to pay all, or any part, of said instalment, or of said interest.

IX.

That by the terms of the said contract the Plaintiff is entitled to the immediate possession of the said premises, factory, machinery and lease, but that the said Defendant continues in possession of the same without the permission, and against the will, of your 5 orator, and refuses to deliver to him possession of the said premises, factory, machinery and lease after default in the payment of the interest and first instalment, as aforesaid.

X.

That your orator on the date of the contract aforesaid, was and now is, the sole and exclusive owner of the said lease and the machinery mentioned in said contract, and is now entitled to the possession of the premises, factory, machinery and lease aforesaid.

XI.

That heretofore, to wit, on the 2nd day of June, 1908, your orator demanded of the said Defendant the possession of the said factory,

premises, machinery and lease, but that the said Defendant refused to deliver the same to your orator.

XII.

That heretofore, to wit, on the 2nd day of June, 1908, your orator filed, on the law-side of this Court, his certain suit against the said Defendant for the possession of the said premises, factory, machinery and lease,—a copy of which complaint is hereto annexed, marked Exhibit "B," and hereby made a part of this Bill.

XIII.

That the said factory and the said machinery is of great value, to wit, not less than the sum of \$65,000.00, and is dedicated to the purpose of manufacturing sugar from cane. That the season for the grinding of cane and the manufacturing of sugar in Porto Rico usually commences about the month of December, of each year, and terminates in the months of May, June or July, of the year following, according to the amount of cane to be ground. That there are no lands annexed to, or which pertain to, the said factory which can supply the same with any appreciable quantity of cane for the purpose of grinding, so that it is absolutely necessary in order that the said factory may grind any cane and manufacture sugar for the owner of the said factory and machinery to make contracts with the people (colonos) growing cane in and about that vicinity, so that said growers of cane will deliver the same to the said Central Altamaria to be ground, and that said contracts are usually made and entered into in the month of June, July and August. That any delay in the making of said contracts for the delivery of cane, as aforesaid, endangers the business of the said factory and renders the owner of the same liable to the loss of the said contracts and the consequent failure of securing cane for grinding during the following season, thus obliging the said factory and the said machinery to remain idle and entailing the loss of thousands of dollars to the owners of the same.

XIV.

And your orator further alleges that the said Defendant is indebted to various persons in large sums of money, to wit: in a sum in excess of \$60,000.00, and is unable to pay the same or meet its obligations, and is insolvent.

XV.

That on the 16th day of May, 1908, judgment was rendered by this Honorable Court against the said Defendant and in favor of the firm of Nevers and Callaghan for a large sum of money to wit, about \$17,000.00 100 then due and owing to the said firm. That thereafter the execution was issued on the aforesaid judgment and a levy was made by the Marshal of this Court, in pursuance of said Writ, on the aforesaid factory and machinery on the — day of May,

1908, and that the said Marshal now threatens to sell the said factory and machinery in satisfaction of the said judgment.

7

XVI.

And your orator further alleges that unless a Receiver be appointed, pending the decision of the aforesaid suit at law, to take charge of and preserve the said factory and machinery, and with the powers hereinafter mentioned, the said factory and machinery will greatly deteriorate in value and the owner of the same will suffer great loss and be unable to secure the contracts for the delivery of the cane, as above stated.

In consideration whereof, and for as much as your orator is remiss in the premises, at and by the strict rule of the common law, and is only relieviable in a court of equity, where matters of this sort are properly cognizable and relieviable, etc.

To the end, therefore, that your orator may have that relief which he can only obtain in a court of equity, and that the said Defendant may answer in the premises, but not upon oath or affirmation, the benefit whereof is hereby expressly waived by your orator, he now prays the Court:

May it please Your Honor to grant unto your orator a Writ of Subpoena, directed to the said Defendant-Corporation and to be served upon its representative in Porto Rico, Frederick L. Cornwell, thereby commanding the said corporation, and under a certain penalty therein to be limited, to appear before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and abide such order, direction and decree as may be made against it in the premises, as shall seem meet and agreeable to equity.

That a Receiver be appointed to take charge of the premises, factory and machinery of the Central Altagracia above-described, and to manage the same under the orders of this Court pending the decision of the aforesaid suit at law.

That the said Receiver be authorized by proper order of this Honorable Court to enter into and make contracts with suitable parties for the delivery of cane to be ground at the said sugar-factory, to wit, Central Altagracia, and to advance such sums of money on said contracts as is usual and proper in such cases; and, further, that the said Receiver be authorized for this purpose, and for the preservation of the said machinery and factory, to issue proper Receivers' certificates of indebtedness up to the amount of \$—, and which indebtedness represented by the said certificates shall be and constitute a first and prior lien upon the said factory and machinery.

And that your orator may have such other relief in the premises as the nature and circumstances of the case may require.

T. D. MOTT, JR.,
Solicitor for Complainant.

San Juan, Porto Rico, June 2, 1908.

UNITED STATES OF AMERICA,
District of Porto Rico, ss.

Ramon Valdez, being first duly sworn, deposes and says: that he is the Complainant mentioned in the foregoing bill; that he has read the same and knows the contents thereof, and that the facts therein alleged are true of his own knowledge.

R. VALDES.

Subscribed and sworn to before me this 2nd day of June, 1908.

JOHN L. GAY, *Clerk,*
 By C. A. DAVIDSON, *Deputy.*

RAMON VALDES
 vs.
 CENTRAL ALTAGRACIA, INCORPORATED.

9 To Frederick L. Cornwell and N. B. K. Pettingill—the First as Vice-President and Acting President, and the Second as Secretary and Treasurer, and both as Directors in Porto Rico, of the Corporation “Central Altagracia, Incorporated.”

You will please take notice that there has been filed with the Clerk of the above mentioned Court a Bill of Complaint against the aforesaid corporation, a copy of which bill is hereto annexed, and which bill prays, among other things, for the appointment of a Receiver to take charge of and manage the factory, machinery, etc., of the Central Altagracia, and that the above-named Complainant will, at 5:00 p. m. of the 2nd day of June, 1908, or as soon thereafter as Counsel can be heard, apply to the above mentioned Court to be heard on said petition, and that the said Receiver be then appointed as prayed for.

San Juan, Porto Rico, June 2, 1908.

T. D. MOTT, JR.,
Solicitor for Complainant.

Received copy of this 2nd day of June 1908 at 5 P. M.

F. L. CORNWELL.

(Filed June 2, 1908.)

RAMON VALDES, Complainant,
 vs.
 CENTRAL ALTAGRACIA, Defendant.

Demurrer of Central Altagracia, Defendant, to the Bill of Complaint of Ramon Valdes, Complainant.

I.

This Defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill

to be true, in such manner and form as the same are therein set forth and alleged doth demur thereto, and for cause of demurrer sheweth that the said complainant hath not, in and by said 10 bill, made or stated such a cause as doth or ought to entitle him to any such relief as is thereby sought and prayed for from or against this defendant. Wherefore this defendant demands the judgment of this Honorable Court whether he shall be compelled to make any further or other answer to the said bill of complaint or any of the matters or things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

FREDERICK L. CORNWELL,
Sol. for Defendant.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

FREDERICK L. CORNWELL,
Solicitor for Dft.

ISLAND OF PORTO RICO,
City of San Juan:

Frederick L. Cornwell, being duly sworn deposes and says that he is Vice-President of Central Altgracia, defendant herein, and that the foregoing demurrer is not interposed for delay.

FREDERICK L. CORNWELL.

Sworn to before me this 2nd day of June, 1908.

JOHN L. GAY, *Clerk.*

Journal Entry, June 2, 1908.

No. 564. In Equity.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, Inc.

Comes now T. D. Mott, Jr., solicitor for the complainant Ramón Valdés, and files a petition for the appointment of a receiver for the defendant corporation. The court hears counsel for both 11 sides in the matter and a further hearing of the same is continued over until tomorrow, June 3rd.

(Filed June 2, 1908.)

To the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, in Chancery Sitting:

Central Altgracia, Incorporated, a corporation duly organized and existing under the laws of the State of Maine and a citizen of

said State, brings this its bill of complaint against Ramon Valdés, who is a subject of the King of Spain residing in Porto Rico, and George C. Nevers, George B. Ackerson and James G. Callaghan, as copartners doing business under the firm name of Nevers & Callaghan, who are each and all citizens and residents of the city and State of New York.

And thereupon your orator, complaining, says that, while it is, as above alleged, organized and exists under the laws of the State of Maine, its principal and only business is the running of a factory for the grinding of sugar cane and production of sugar therefrom, situated in the Añasco Valley, near the city of Mayaguez, Porto Rico; and that it is duly authorized and licensed to carry on business within this jurisdiction by the Territorial Government called the "People of Porto Rico."

Your orator further alleges that during or about the month of March, A. D. 1907, finding itself in need of additional ready money to meet its maturing obligations, it negotiated a loan from the defendant Ramon Valdes, through its proper officers, for the sum of \$35,000 which it agreed to repay to said Valdes on or before the 1st day of April, 1908, with interest at the rate of 10% per annum, and as an additional consideration for the making of said loan it was agreed by the managing officers of your orator that said Valdes should be chosen a Director and Vice-President thereof at a salary of \$3,000 per year, which agreement was carried out.

12 Your orator further alleges that during or about the month of June, 1907, the same being at the end of the grinding season for that year, the Directors of your orator, after taking the advice of expert engineers, determined that it was necessary for the welfare of the Company to raise an additional loan of \$30,000 for the purpose of repairing and re-arranging the machinery already in its factory and purchasing additional machinery, and the President and Treasurer of your orator went to New York City for the purpose of negotiating a loan of sufficient amount to cover the above needs and also to pay off certain indebtedness then existing including the debt of said defendants Nevers & Callaghan, which has since been reduced to judgment as will hereinafter more fully appear; that during their sojourn in New York for the purpose aforesaid said President and Treasurer entered into further negotiations with said defendant Valdes, then Vice President of your orator as aforesaid, in consequence of which a preliminary agreement was arrived at whereby defendant Valdes was to advances to your orator the funds necessary to purchase the needed machinery and, if said officers of your orator offered to return said advance with certain commissions and interest before the 15th day of September, 1907, said Valdes was to accept the same and, in case of the failure so to return said advances the same and such other advances as might be agreed upon thereafter were to be regarded as a refaccion debt and the proper documents for the purpose were to be executed; that matters between your orator and said defendant Valdes remained in that condition until about the 15th day of October, 1907, at which time said officers of your orator not having returned the said advances

and further negotiations having resulted in an agreement between said defendant Valdes and the holders of a majority of its stock on behalf of your orator that, in consideration of the promise 13 of said defendant to finance the Company, he should be

elected a member of the Board of Directors and President of the corporation for a period of four years, or until the indebtedness of your orator to him should be paid off, at a salary of \$3,000 per annum, that he should have the right to appoint, subject to the approval of the Board, a Manager under him at a salary of \$2,500 per annum, and that he should receive as a bonus for such financing a block of 150 shares of the capital stock of your orator (which was all that was remaining in the treasury), the proper documents were duly executed to carry into effect the arrangement aforesaid, the said stock was transferred without further consideration, and said defendant Valdes was elected President he already being a member of the Board of Directors of your orator, and the former President, F. L. Cornwell Esq., was elected Vice President.

Your orator further alleges that, after said defendant Valdes became President of your orator in the manner aforesaid, he proceeded to control and manage the business without reference to the wishes, judgment or authority of its Board of Directors, to expend money for all purposes without the knowledge or authority of any member of said Board, to change the plans for the reconstruction of the factory without such knowledge or authority, to install an incompetent Chief Engineer in charge of the running of the machinery against the protest of the other members of the Board, and in all respects to manage the business of your orator according to his individual will and caprice. That from the time of the election of said Valdes as President as aforesaid until the present day not one dollar of the funds of the company has passed through the hands of its Treasurer but every dollar thereof has been collected and disbursed by said Valdes, or by those acting under his direction, so that said Treasurer, in order to avoid responsibility for the uprising acts of

said defendant Valdes over which he had no control, was 11 forced to act under the provision of the by-laws of your orator and ask the Board of Directors to allow him to surrender the performance of his duties as Treasurer to said Valdes by way of substitution, and has been ever since ignored in respect to such duties.

Your orator therefore alleges that said defendant Valdes never in fact loaned any amount to your orator beyond the first loan of \$35,000 hereinbefore referred to but has expended whatever amount he may have spent in your orator's business, with the exception of the price paid for a portion of the machinery purchased and some of the reconstruction work, without the consent or authority of your orator's Board of Directors and without any part of the same passing through its treasury; and that the total amount claimed to have been expended by said defendant in your orator's business is far in excess of any expenditure authorized or contemplated by said Board of Directors and far more than the financial condition of your orator warranted.

Your orator further alleges that after the making of the preliminary agreement between the officers of your orator and said Valdes in New York and the beginning of the purchase of machinery by him and making of repairs in the factory the said Valdes assumed the active management of the business of your orator, sent his agents to your orator's factory to take charge there and, through said agents spread throughout the community of Mayaguez the report that said defendant had been obliged to take over the property and business of your orator on account of the inexperience, incompetence and extravagance of the President and Treasurer formerly in control of its affairs, that said individuals had been removed and had no further connection with said business, and that said defendant had purchased and was the owner of said factory and

machinery and all the property of your orator included in
15 its said plant, the said defendant all the while well knowing that said individuals were still respectively Vice President and Treasurer of your orator and still members of its Board of Directors; all of which acts tended greatly to the injury of your orator in depriving those who would otherwise have dealt with it of all confidence in the stability of its business and tending to cause suspicion of the character and ability of its officials, other than said President.

Your orator further alleges that said defendant, instead of carrying out his said agreement with your orator to advance money to it for the purchase of machinery, proceeded to contract for and purchase machinery in his own name, to have the same shipped to himself individually as consignee, and to erect the same in the factory which he then and since has claimed to be his own and to which he has now brought a suit at law in this court to establish his title, yet he has at all times claimed and still claims that your orator is indebted to him for the price of said machinery. That said defendant also proceeded to procure and enter into contracts for the grinding of sugar cane in his own name, instead of in the name of your orator, and in some instances the cane so bought has been entered in the books of your orator as purchased at a higher price than named in the individual contract with said defendant; all which was in direct violation of his duty to your orator as its President and managing officer and to the financial injury of your orator.

Your orator further alleges that said defendant Valdes before the beginning of the grinding season which is just closing was guilty of inexcusable extravagance in the work preparatory to such season and expended large sums in excess of what was reasonably necessary for that purpose; that after the beginning of said grinding the management of orator's factory, under the direction of said
16 defendant as President, has been both extravagant and incompetent, that soon after the season commenced he discharged from orator's employment the only employé competent to manage the sugar-making department, leaving the same in charge of persons wholly inexperienced and without skill in the handling of such machinery of the complicated and up-to-date kind contained in said factory; that he has continued as Chief Engineer during the

whole of the crop a man known to him and demonstrated by his work to be incompetent; that he has so mismanaged the service of cane by the railroad cars that colonos have been unable to cut and haul cane to said cars with any regularity whereby the service of cane to said factory has been irregular causing increased expense in grinding and decreased results in sugar; that in the midst of the grinding season he absented himself from the Island for a period of nearly two months, during which time his Manager left in charge was without authority of discretion in action as well as without funds properly to conduct your orator's business; and that, in short, the extravagance and incompetence of the management of said defendant was such that, notwithstanding the perfect condition of the machinery in said factory and the unusual high price of sugar during all of said grinding season, the operations of your orator's factory show practically no profit, and, considered in connection with the general expenses of your orator for the year, show a positive loss, and the amount of sugar produced only three-fourths as much as either of the previous years of your orator's existence.

Your orator further alleges that said defendant Valdes expended several thousands of dollars in the purchase of scales for the weighing of cane and erected the same at various places along the line of the railroad, but said expenditure resulted practically without benefit

as only a small amount of cane was purchased at any of said
17 scales on account of the refusal of said defendant on behalf
of your orator to pay the competitive rates which other
buyers were paying, while on one occasion purchasing outright cane
upon which your orator suffered a considerable loss.

Your orator further alleges that said defendant, since occupying the office of President, has purchased for his own account a large amount of the indebtedness owing by your orator at a large discount from the face value thereof, but instead of allowing your orator the benefit of the reduced price at which the same was acquired, and instead of using said money for the advantage of your orator in acquiring cane contracts, of which your orator was in great need said defendant has demanded and is now demanding of your orator's Board of Directors that entries be authorized in its books of account transferring said indebtedness into the name and favor of said defendant for the amount of its full face value and interest.

Your orator further alleges that in the month of November, 1907, after defendant and his agents had been in full possession and control of the books and accounts of your orator since the preceding August, defendant made an offer of sixty cents on the dollar of the par value of orator's capital stock for a controlling interest therein, but after being in full control and management of all your orator's business during an entire sugar season, although he claims that said season had been a prosperous and successful one, defendant has stated that said stock is worth practically nothing.

Your orator further alleges that on the 16th day of May, 1908, judgment was recovered in this court by the said defendants Nevers & Callaghan against your orator for the sum of about \$17,000 upon which execution has been issued and levied upon the said ma-

chinery and factory of your orator, yet said defendant Valdes as President of your orator has done nothing to avoid said execution and levy. That, although said defendant has had entire 18 charge and control of the financial operations of your orator since his election as President, and has been charged with the duty as such of providing for means of paying the most pressing indebtedness of your orator, yet he has made no provision for the payment to himself of the interest now due upon the loans claimed to have been made by him to your orator, and is even now bringing a suit in this court to declare a forfeiture of the title of your orator to its said property because of the non-payment of said interest.

Your orator further alleges that there are practically no lands annexed to, or which pertain to, the factory of your orator which can supply the same with cane for the purpose of grinding, so that it is necessary in order that said factory may grind cane and manufacture sugar that your orator should have contracts with the growers of cane for the delivery of the same for grinding, which contracts are usually made in the months of June and the following; that said Valdes has failed to provide contracts for cane to the extent needed by your orator and that further delay in the making of the same will endanger the business of your orator and render it liable for large loss, and that for the obtaining of a sufficient number of such contracts advances of considerable quantities of money to the cane growers will be necessary; and that the value of your orator's said property depends upon its carrying on its said business and continuing as a going concern, and that your orator has a large unsecured indebtedness beside that owing to said defendant Valdes.

Your orator therefore avers that a Receiver should be appointed by and under the authority of this court to take charge and control of the property all and singular of your orator and to carry on its said business for the benefit of its creditors until its debts can be discharged or property funded so that both creditors and 19 stockholders may be secured.

To the end, therefore, that your orator may have that relief which can only be obtained in a court of equity and that the defendants, Ramon Valdes, and George C. Nevers, George B. Ackerson and James G. Callaghan, as copartners as alleged, may answer this bill, but not upon oath, the benefit whereof is hereby expressly waived; that a receiver may be appointed for the purposes hereinbefore alleged and with the usual powers and responsibilities of receivers in such cases; that the defendants and all other persons may be enjoined from interfering with the possession or control of said receiver; and that your orator may have such other and further relief in the premises as equity may require and to your honor may seem meet.

May it please the court to grant unto your Orator a writ, etc.

F. L. CORNWELL,
Counsel for Complainant.

UNITED STATES OF AMERICA,
District of Porto Rico:—

F. L. Cornwell, being first duly sworn, says that he is Vice President as well as counsel for the complainant Company; that its President, Ramon Valdes, is one of the defendants; that he has read the foregoing bill and knows its contents and the statements therein made are true of his own knowledge.

F. L. CORNWELL.

Sworn to and subscribed before me this 2nd day of June, 1908.

JOHN L. GAY, *Clerk*

Journal Entry, June 2, 1908.

No. 565. In Equity.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES.

20 Comes now F. L. Cornwell, Esq., solicitor for the complainant herein and prays the court for the appointment of a Receiver for the Central Altagracia, Incorporated.

The Court hears counsel in the matter, and, not being fully advised in the premises, the further consideration of same is continued over until tomorrow, June 3rd.

Journal Entry, July 20, 1908.

No. 564.

RAMÓN VALDES
vs.
CENTRAL ALTAGRACIA, INC.,

565.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES.

In these two entitled causes, the Court having in the forepart of June, 1908, immediately previous to the trip of the Judge to the States, appointed H. H. Scoville, Esq., under the prayers of the bills, as Temporary Receiver of the property referred to in each of the bills of complainants, and now the matter of the appointment of a permanent receiver and other matters concerning said estate, having been argued by the respective counsel and considered by the Court during several days last past, and on consideration thereof:

The Court now files its views in writing as to the matter of said Receivership, etc. and requires that proper orders be drawn and entered without delay to carry out the views and directions of the Court as therein set forth.

Thereupon F. H. Dexter, representing the Sanchez de Larragoiti Estate, which claims to own the fee to the land upon which the Central Altagracia is built, objects to the views and orders 21 of the Court as thus set forth, and to the issuing of any Receiver's Certificates to be a lien upon said property, and gives notice of his intention to intervene in the case and oppose the same in behalf of his said client.

Thereupon N. B. K. Pettingill, Esq., files a petition in said causes intervening on behalf of certain creditors, and F. L. Cornwell, Esq., files a petition praying that the Receiver be appointed be authorized to borrow money for the carrying on of the enterprise.

Mr. Cornwell further files a petition signed by divers of the stockholders of the said Central Altagracia, praying for the appointment of N. B. K. Pettingill, Esq., as such Receiver in the premises.

In accordance with the views of the Court thus on this day filed as above set out, it is:

Ordered that said two above entitled causes shall, for the purpose of the Receivership and for all purposes of actual hearings and trial, be conducted as one suit, and the Clerk will place a notice in the files of each case to that effect. Counsel for the parties may make up the actual issues under the separate titles and numbers, and may introduce their proofs on the issues thus raised,—but the two causes shall be considered as joined for the purposes of the receivership and all hearings and the trial.

(Filed July 20, 1908.)

No. 564. Equity.

RAMON VALDES
vs.
CENTRAL ALTAGRACIA, INC.,

and

No. 565. Equity.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES.

22 *Views of the Court as to the Matter of a Receivership under Which Proper Orders are to be Drawn and Entries to be Made.*

The above two entitled causes were filed in the forepart of June, 1908, as the Court was about to take a short trip to the States. At

that time not being able to give the attention to the matter which its importance demanded we considered them together as they involved the same property and requested the same relief, and we appointed H. H. Scoville, Esq., as Temporary Receiver and Custodian of the premises and estate in dispute.

Since our return from the States on July 2nd, the matter has been the subject of consultation between the Court and counsel for the respective parties almost daily. After a full discussion of the matter and a full consideration of the rights of the parties and the situation of the property as shown by the above two mentioned suits and by other suits on file in this Court, we have concluded to settle the matter at least for the present as follows:

The two suits, if the same has not been done heretofore, will be consolidated and proceed as one suit. The complainant in each suit will at once file a request to the Court that the Receiver to be appointed be given leave to borrow such sum of money as the Court may deem proper for the preservation and conduct of the said estate and sugar business, the loan to be declared a first lien against such complainants and all creditors upon all property rights such complainants may have in the premises.

The Court has concluded that it has no inherent right to prevent the writ of error to the Supreme Court of the United States prayed for by the defendant, the Central Altagracia, in suit No.

516, of Nevers & Callaghan against it, and therefore 23 the same is allowed and supersedeas granted. But under the circumstances the bond to stand as a supersedeas will be fixed at the sum of \$16,000 and a proper entry will be made in the suit referred to, to carry out the leave here granted. But if said supersedeas bond is not filed, even then the execution in the premises will be stayed, until the further order of the Court.

The resignation of H. H. Scoville, Esq., as temporary Receiver will be accepted and he will be at once appointed permanent Receiver of the estate in question, under the prayers of the bills of complaint. But the Court reserves the right to end this receivership at any time it deems the same best for the interest of the estate. The Receiver will be allowed \$500 for the two months service he has already performed, and in the future until the further order of the Court, as permanent Receiver he will be allowed a salary of \$300 per month, beginning August the 1st, 1908. He will give a bond either Security Company or personal, in the sum of \$10,000 conditioned as is usual, and take and file a proper oath in the premises.

He will be at once permitted to borrow money and to issue Receiver's certificates or promissory notes therefor, the same to be a first lien on all of the rights of either of the complainants in the above entitled suits, upon the property described in the bills and now owned, claimed or possessed by the Central Altagracia, Inc., or Ramón Valdés and situated upon or appurtenant to the plant on the 22 acres of land, upon which the Central is located, whether such property or rights are claimed by the Central Altagracia or Ramón Valdés. Said certificates or notes shall not be issued for

the present at least to exceed in all \$10,000.00, nor at first to exceed the sum of \$6,000 without further leave of Court, the balance to be issued, if required, and the loan shall bear interest as borrowed at as low a rate as may be obtainable, but in no event to 24 exceed 9% per annum. Such money or any part thereof shall not be borrowed for longer periods than nine months.

The Receiver will, with the money received, pay such sum, said to be about \$1,600, as may be found due to colonos for cane already delivered to the mill, and shall further at once pay the Insular taxes due on said estate, said to be something like \$1,400. He will pay himself his salary as here allowed and the advances he has already personally made to the estate. He shall also pay some few small bills including wages, etc., amounting in all to a little over \$500 now due from said estate, for all of which he shall take proper receipt. The balance of said sum first borrowed shall be used for monthly pay rolls and if found necessary, in advances to colonos or to people who agree to deliver their sugar cane to the Altamaria Mill to be ground,—the Receiver to take the usual best security, in that behalf.

The Receiver will at once discharge all unnecessary help during the idle season, of every kind and character, save that he may have if necessary one assistant at a salary not to exceed \$60 per month, and said Receiver by himself and with the aid of said assistant must at once use his best endeavors to secure cane-grinding contracts for said Central for the longest time possible and report his success in that behalf to the Court as often as may be. And whenever he finds opportunity to secure any such contracts by the advance of any sum of money which he may not then possess, he will apply to the Court for leave to borrow money for that purpose if within the original amount of \$10,000 here authorized. It is understood that the paramount desire of the Court is to preserve said property as a going concern, and that therefore the obtaining of cane-grinding contracts is the matter of first and greatest importance, and the

25 best efforts of the Receiver and all others concerned must be directed to that end. It is understood that said receiver shall take absolute and general charge of said estate, preserve the plant and machinery as may be proper, during this idle season, and employ herdsmen and watchmen as may be absolutely necessary only, so as to keep down expenses of every kind and character.

He shall realize and use as may be necessary any funds by the sale or handling of any molasses or any product that may now be on hand. He will in any event file monthly statements with the Court and will as often as may be necessary inform the Court of his success as to obtaining of cane-grinding contracts with a view to further action by the Court in about the month of November, 1908, as to the commencement of grinding for the new season, or refraining from so doing. It being understood that the Court reserves the right to so cease and refrain notwithstanding its orders appointing the receiver hereunder.

It being proper in any event, and the Court having the specific

promises of the respective parties contending here of their full aid and support, to the Court and the Receiver in carrying out the interests of this estate, the Court and the Receiver will expect such aid and assistance in all proper ways, but the Receiver will permit no interference by either of the parties as to the actual conduct or management of the estate as against his own views, and will report to the Court as he shall deem the same necessary, any act or thing done by either of the parties that may in his judgment not tend to the welfare of the estate.

All creditors of the estate must file their accounts with said Receiver or the Court as they may deem best, and the same will be allowed or disallowed and ordered paid as may be possible or proper at the proper time during the progress of this litigation.

26 Counsel on the respective sides will at once prepare all orders necessary or proper under this expression of the Court's views, and after agreeing upon the form of the same between themselves, immediately submit the same to the Court for its approval, and should they fail to agree, the Court will, upon application, settle the same. The Receiver, after he qualifies, will mail proper circulars to all creditors and others interested setting out the substance of this action of the Court.

B. S. RODEY, *Judge.*

July 20, 1908.

(Filed July 22, 1908.)

No. 564.

RAMÓN VALDES

vs.

CENTRAL ALTAGRACIA, INC.

No. 565.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMON VALDES and NEVERS & CALLAGHAN.

Now on this 20th day of July, A. D. 1908, the application for the appointment of a Receiver of all the property of the said Central Altgracia, Incorporated, made at the same time by the complainants respectively in the above entitled suits, comes on finally to be heard; at which hearing are present in open court the respective parties, to wit: Ramon Valdes, represented by his solicitor Thomas D. Mott, Jr., Esq., the Central Altgracia, Incorporated, represented by its solicitor F. L. Cornwell, Esq., and Nevers & Callaghan, represented by their solicitor F. H. Dexter, Esq.; and also the intervening creditors William V. Rowe, as Assignee of the firm of J. M. Ceballos & Company, American Colonial Bank, F. L. Cornwell and N. B. K. Pettingill, all represented by the last named in his own behalf and as solicitor for the others named; and the said

application having been heretofore fully investigated and considered by the Court at Chambers, and the court being fully advised in the premises; it is, now, hereby

27 Ordered and decreed that the resignation of H. H. Scoville, Esq., heretofore appointed by order of the 3rd day of June, 1908, Temporary Receiver and Custodian of the property of said corporation in these suits, is hereby accepted; that the said H. H. Scoville, Esq., be, and he is hereby, named and appointed as the Permanent Receiver of this court of all and singular the property of whatever kind or nature belonging to the said Central Altagracia, Incorporated, a corporation existing under the laws of the State of Maine, or to said Ramon Valdes, and commonly known by the name of Central Altagracia, including all its buildings, machinery, supplies, furniture, live stock, railroad spurs, side-tracks, switches, scales and material of every name, nature and description whatsoever; also all its stocks, promissory notes and other obligations, choses in action, accounts, rights under contracts of all kinds including the contract of leasehold under which said corporation acquired the premises now occupied by it, and all its tolls, income, profits and assets of every description whatsoever; that said Receiver be, and he hereby is, authorized and directed to take immediate possession of all and singular the property, rights and assets above described or referred to, wherever situated or found, to preserve and care for the same and maintain it in proper condition and repair so that it may safely and advantageously be used, and to run, manage and operate the said factory or plant for the manufacture of sugar under the orders of the Court to be entered, whenever the proper season for such operation shall begin, and to employ such persons as clerks and employees and make such payments and disbursements as may be needful and proper in so doing.

It is hereby further ordered that the said Receiver, within the next 30 days, file with the clerk of this court a proper bond with either personal or corporate security to be approved by the Judge in the penal sum of Ten Thousand Dollars (\$10,000.), con-

28 ditioned for the faithful discharge of his duties and to account for all the property and funds coming into his hands according to the order of this court; and that said Receiver take and file a proper oath for the due performance of his duties in the premises.

Each and every of the officers, directors, agents or employees of said Central Altagracia, Incorporated, each and every of the other parties to the above entitled suits, and all creditors and other persons or corporations, are hereby required and commanded to turn over and deliver to said Receiver, or his duly constituted representative, any and all property, books of account, vouchers, deeds, leases, contracts, bills, notes, accounts, money, stocks or obligations, or other property in his or their hands, or under his or their control, and each and every of such directors, officers, agents, employees, persons and corporations, are hereby required and commanded to obey and conform to such orders as may be given to them from

time to time by such Receiver in conducting the operations of said property and in discharging his duty as such Receiver.

And it is hereby further ordered that all officers, agents and servants of said Altagracia corporation, its creditors, all other parties to said suits and all other persons, be, and the same hereby are, restrained and enjoined during the pendency of this action from interfering with, transferring, selling, or disposing of in any way, any of the property, rights or assets hereby placed in the custody of said Receiver, or from taking possession of or in any way interfering with the same or any part thereof, or from interfering in any manner with the possession or management of any part of said property, rights or assets by said Receiver, or from interfering in any manner to prevent the discharge by him of his duties or the custody and operation of said property and plant under the order

of this court. And it is specifically hereby ordered that any 29 further proceedings under the execution issued out of this court in favor of the defendants Nevers & Callaghan against said Central Altagracia, Incorporated, or the issuance of any alias execution therein, be suspended until the further order of this court.

It is hereby further ordered that said Receiver be, and he hereby is, authorized and permitted at once to borrow money and to issue Receiver's Certificates or promissory notes therefor which shall be a lien prior and superior to all others upon all the right and title of either of the complainants in the above entitled suits in and to all the property, rights and assets in said bills of complaint or in this order described, whether such property, rights and assets are claimed by said Central Altagracia or by said Ramon Valdés; but such lien shall not affect the rights if any of the Sucesion of Sanchez de Larragoiti in the fee or under their contract; that the amount of such Receiver's Certificates or notes to be issued at present shall not exceed Ten Thousand Dollars (\$10,000) of which not more than Six Thousand Dollars (\$6,000) shall be issued without a report of the intended disposition of the same and a further leave of court, the said balance to be issued when and if required after such leave, and the question of the issuance of Receiver's Certificates or notes to any larger amount than said ten thousand dollars to remain open until such an emergency may arise and the Court authorizes the same; that the Receiver's Certificates or notes so to be issued shall bear interest from the time each loan may be made at as low a rate as may be obtainable but in no event to exceed 9% per annum; and that such loans shall not be negotiated for longer periods than nine months.

It is hereby further ordered that, out of the money so borrowed as aforesaid, said Receiver pay to the colonos of said Central 30 Altagracia such sums as may be found due any of them for cane delivered to its factory for grinding during the past season, to the Insular Government such amounts as may be due it for taxes upon the said property in his hands, to himself the salary due him as Temporary Receiver and Custodian under the previous order of this court, aforesaid, which is hereby fixed and allowed at

the sum of Five Hundred Dollars (\$500.), and to such employees of the Altagracia corporation during the past season as remain unpaid in whole or in part the amounts which may respectively remain so due and unpaid according to the books and records of said corporation; and that the balance of the said sum first to be borrowed shall be used for monthly payrolls and, if found necessary, in advances to colonos making new contracts for the grinding of their cane, for which the Receiver shall take the usual best security in that behalf.

It is further hereby ordered that said Receiver shall at once discharge all unnecessary salaried officers, employees and help for the remainder of the idle season; provided that he may retain, if necessary, one assistant at a salary not to exceed Sixty Dollars (\$60); that said Receiver shall, by himself and with the aid of said assistant (if one is retained) use his best and urgent endeavors to secure cane-grinding contracts on behalf of said Altagracia corporation in as large quantity and for as long terms as possible and report his proceedings in that regard and the result thereof to the court at convenient intervals but at least monthly; and that, whenever said Receiver finds opportunity to secure any such contracts by making advances of money to the prospective colonos upon proper security to an amount beyond what said Receiver may at such time be authorized to borrow or have on hand to be devoted to such objects.

31 said Receiver may apply to the court for further authority in the premises, and all such applications will be considered and passed upon in the light of conditions as they then exist, the paramount desire of the court being to preserve said property as a going concern for the greatest ultimate benefit of creditors and stockholders and to that end the best efforts of said Receiver and all concerned must be directed to the securing of cane-grinding contracts as the matter of primary importance.

It is hereby further ordered that said Receiver collect such accounts owing to said Altagracia corporation as he may be able and also realize such money as possible by the sale or handling of any molasses or other product that may now remain on hand; that he shall file monthly reports with the court, including itemized accounts of his receipts and disbursements, which accounts as well as those filed or to be filed with reference to his Temporary Receivership shall be subject to exceptions by the parties and review by the court; and that said Receiver shall permit no interference by any of the parties contrary to his own views as to the actual conduct or management of the estate in his hands, and shall report to the court any act or thing done by any of such parties or their representatives that may in his judgment not tend to the welfare of the same. The salary of said Receiver shall be the sum of Three Hundred Dollars (\$300) per month, beginning from the first day of August, 1908.

Said Receiver is hereby fully authorized and empowered to institute and prosecute such suits as may be necessary in his judgment for the proper protection of the property and trust hereby vested in him, and to likewise defend all such actions instituted against him

as such Receiver, and also to come in and take the prosecution or defense of any of the suits now pending in which Central Altagracia is a party, the present attorneys of said corporation being hereby directed to proceed with said pending litigation under the direction of said Receiver.

32 It is hereby further ordered that all creditors of said Central Altagracia, Incorporated, and all persons claiming any lien or other right against any of the property coming into the custody and control of the Receiver of this court herein, must file their accounts either with said Receiver or with this court, as they may be advised, and said Receiver shall give notice to all such creditors and claimants shown by the books of said corporation of this provision of this order and of the substance of the action now taken by the court. All such claims will be hereafter duly heard and considered by the court, and allowed or disallowed with such effect upon the property in said Receiver's hands as may be in accordance with law and equity.

And, lastly, it is hereby ordered that, in consideration of the controversies which the court can see are possible to arise between the conflicting interests represented in this litigation and of the importance to the conservation of said property to postpone such controversies for the present, and delay on the part of any of the parties hereto or of the stockholders of said Central Altagracia in asserting by suit supposed rights or liabilities as between themselves or against one another, during the pendency of this Receivership, shall not be considered or held to be equivalent to or in the nature of laches in the assertion of such rights or the claim of such liability.

All matters of whatever nature not included in or covered by the terms of this order are hereby reserved for the further order of the court.

Done and ordered in open court at San Juan, this 22nd day of July, A. D. 1908.

B. S. RODEY, *Judge.*

33

(Filed July 23, 1908.)

Equity. No. 564.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INCORPORATED,

and

Equity. No. 565.

CENTRAL ALTAGRACIA, INCORPORATED,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Consolidated.

Appearance of Nevers & Callaghan to the Suit Instituted by Central Altagracia, Incorporated, and Their Demurra to its Bill of Complaint.

Never & Callaghan, Defendants above-mentioned, a copartnership composed of George C. Nevers and James G. Callaghan, by and through their undersigned Solicitor, Francis H. Dexter, enter their appearance to the above-entitled suit instituted by the Central Altagracia, Incorporated, against them and Ramón Valdés and they hereby demur to the Bill of Complaint filed herein by the said Central Altagracia, Incorporated, for the reason that it sets forth no cause of action against these Defendants, nor prays any relief as against them, but said Bill of Complaint as to these Defendants is frivolous and without merit.

Wherefore they pray that the said bill of Complaint be dismissed as to them and that they be discharged with their costs.

San Juan, Porto Rico, July 23, 1908.

NEVERS & CALLAGHAN,

By their Solicitor, F. H. DEXTER.

Service of copy of foregoing accepted this — day of July, 1908.

Attorney for Central Altagracia, Inc.

34

(July 17, 1909.)

Equity. No. 564.

RAMÓN VALDES
vs.

CENTRAL ALTAGRACIA, INCORPORATED,

and

Equity. No. 565.

CENTRAL ALTAGRACIA, INCORPORATED,

vs.

RAMÓN VALDES and NEVERS & CALLAGHAN.

Consolidated.

Amended Demurrer of Nevers & Callaghan.

Nevers & Callaghan, defendants above-named, a co-partnership composed of George C. Nevers and James G. Callaghan, by and through their undersigned solicitor Francis H. Dexter, enter their appearance to the above entitled suit instituted by the Central Altagracia, Incorporated, against them and Ramon Valdes and they hereby demur to the bill of complaint filed herein by the said Central Altagracia, Incorporated, for the reason that it sets forth no cause of action or subject of equitable jurisdiction to justify the Court in granting relief as prayed or otherwise.

Wherefore, they pray that the said bill of complaint be dismissed and that they be discharged with their costs.

Mayaguez, Porto Rico, July 12, 1909.

NEVERS & CALLAGHAN,

By their Solicitor, F. H. DEXTER.

35

Journal Entry, July 21, 1909.

#579, San Juan. Law.

ANTONIO J. L. SANCHEZ DE LARRAGOITI et al., Composing the Cucu
or Estate of Joaquin Sanchez de Larragoiti, Deceased,

vs.

SALVADOR CASTELLÓ, CENTRAL ALTAGRACIA, et al.

203, Equity. Mayaguez.

SALVADOR CASTELLÓ et al.

vs.

CENTRAL ALTAGRACIA, INC., and H. H. SCOVILLE, Receiver.

516, San Juan. Law.

NEVERS & CALLAGHAN

vs.

CENTRAL ALTAGRACIA.

563, Law. San Juan.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC.

No. 564, San Juan. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC.,

and

No. 565, San Juan. Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS et al.

The Court having recently heretofore held a joint conference with all counsel in all of the above entitled causes involving the property and rights in and to the property known as the Central Altagracia, on this day sends a Memorandum to the files (which Counsel are directed to examine) setting forth its views in the premises, and its intention to bring the litigation, receivership, etc., regarding this property to an end and of causing immediate issue to be raised on the pleadings for that purpose, and in consequence with said 36 memorandum, it ordered: That nothing is to be done in suit #579 as the same is on appeal to the Supreme Court of the United States (unless such appeal should be dismissed).

That the Demurrer in suit #203 be and the same hereby is overruled.

That the matter of stay of Execution now existing regarding suit #516, now in force, and the question of whether or not a lien exists under said execution and its priority will be considered in the issues to be tried the coming week.

That the Demurrer in suit #563 will be permitted to remain in abeyance for a short time until issue in 564 and 565 is decided.

That the demurrers in suits 564 and 565 consolidated, be and they hereby are, overruled and respondents in each case are required to answer on or before Monday the 26th instant so that a trial of the issue thus raised can be begun upon the following day before the Court without the intervention of an Examiner or Master. Provided that nothing in this order shall prevent the parties in either case, as may be proper, from immediately amending their Bills or from filing a Cross-Bill in addition to an Answer, but in such case, the latter shall be considered as denied, and issue made as may be proper so that the trial may proceed notwithstanding.

(Filed July 21st, 1909.)

The Central Altagracia, Incorporated, Cases.

Memorandum.

There are six suits pending in this court, five in the San Juan Division and one in the Mayaguez Division, relating to the property mentioned in the title. The property is now, and has been for about a year last past, in the hands of a receiver of this court. The receivership, in so far as keeping the property as a going concern without running in debt, has been an unfortunate failure. It has run in debt during the year's receivership, all told about seventeen thousand dollars, and more than half that amount is represented by outstanding receiver's certificates.

37 This deplorable condition resulted in the Court calling all counsel interested before it at Mayaguez on the evening of the seventeenth day of July, instant, when, after some consultation between the Court and the several counsel it was announced from the bench that the Court would soon take some action with a view to settling the many conflicting rights regarding the property.

Suit No. 579 is a bill in equity by the Sanchez de Larragoiti heirs against practically everybody else connected with the matter. These heirs are the owners of the original plant and the twenty-two acres of ground it is situated on, and leased it to one Salvador Castelló and his brother Gerardo some three or four years ago for a term of twenty years. These lessees transferred their whole rights in the property and the lease to parties who organized the present corporation known as the Central Altagracia, Incorporated, and that concern in one way and another is said to have put about a quarter of a million dollars' worth of improvements on the place and is also said to be largely indebted as a consequence thereof. This suit is now pending on appeal to the Supreme Court of the United States in consequence

of the Court having held it in abeyance until it could permit all the other rights to be litigated.

Suit No. 203 in the Mayaguez Division is also a bill in equity by these lessees Salvador Castelló and Gerardo Castelló against the aforesaid corporation, Central Altamaria, Incorporated, alleging that the latter has violated all the terms of the contract between the parties, and praying that the same be cancelled and they restored to their original rights and the corporation enjoined from hereafter asserting any rights at all in or to the property in question.

Suit No. 516 is a judgment at law in the San Juan Division with a levy thereunder on the property in question for about seventeen thousand dollars in favor of the firm of Nevers & Callaghan of New York against the said Central Altamaria, Incorporated, for 38 machinery furnished to and used in the erection of the sugar plant, as it is said, the execution being held in abeyance by this court pending this litigation.

Suit No. 563 is a straight suit at law in the San Juan Division by Ramon Valdes against the Central Altamaria, Incorporated, to eject the latter from the possession of the plant in question on the ground that the plaintiff is the sole owner thereof and that the defendant corporation is wrongfully in possession under condition broken of the contract between the parties. It is pending on demurrer.

Suit No. 564 is a bill in equity by Ramón Valdes against the Central Altamaria, Incorporated, and is, according to its terms, brought in aid of his suit at law No. 563 aforesaid. The bill is little more than a petition for a receiver to preserve the property as a going concern until the suit at law could be pressed to judgment. Under it, coupled with suit No. 565 mentioned next below, the receiver was appointed and has been acting for a year, as first above in this memorandum stated. This bill is pending on demurrer.

Suit No. 565 is a bill in equity and is just the reverse of No. 564 last aforesaid. It is brought by the Central Altamaria, Incorporated, against Ramon Valdes and Nevers & Callaghan, alleging that the said Valdes falsely claims to be the owner of the property and that he as an officer of the complainant corporation was mismanaging the property and was failing to protect the same against the judgment of Nevers & Callaghan, and makes many other allegations in the premises. This suit is also pending on Demurrer. This suit and No. 564 were consolidated for the purpose of the receivership and several of the others endeavored to intervene therein.

We are strongly pressed to bring on law suit No. 563 of Ramón Valdes against this Central for trial, and to give him immediate possession of the premises as the owner thereof. This is strenuously objected to by the other officers of the Central Altamaria, and also by counsel for Nevers & Callaghan, and incidentally by the same counsel for the Sanchez de Larragoiti heirs, although the suit regarding the latter is on appeal. After examining into the matter, we regard the effort to press Mr. Valdes' suit at law, under all the circumstances of the case as preposterous and wholly unwarranted at this time. If the allegations, or any large portion of them, in the bill in suit No. 565 are true, which we are not

asserting, he has no right to maintain the suit at law, but we are not passing upon that fact either at this time. The court cannot be induced to believe on the mere allegation of one party, when that is denied by the opposite party, that the officers of the Central Altagracia, Incorporated, gave away to Mr. Valdes the entire rights of all the stockholders and all the general creditors and sold the entire lease interest and all the machinery of the plant for sixty-five thousand dollars, or any other such sum, when the same is alleged to be worth nearly a quarter of a million.

We have concluded that the first thing to be done is to try out the rights of the Central Altagracia, Incorporated, and Mr. Valdes to a definite finish, and we are of opinion that that can be better done in a suit in equity than otherwise. We have examined the contracts that were furnished us, which are said to be a basis for Mr. Valdes' suit No. 563 at law and we are certain that to try the law suit at this time before the consolidated suits in equity, Nos. 564 and 565, would be wholly unsatisfactory and might work great injustice to others than the Central Altagracia even. It must be determined whether Mr. Valdes is a mere general creditor of the Central Altagracia, as the latter claims, or whether he is simply a mortgagee with a more or less prior lien, or whether his claim to be the 40 actual owner of the machinery of the plant and of all the lease rights therein of the Altagracia for the sixteen years of the term thereof yet to run is well founded. It must further be determined whether his mortgage lien, if he has one, is superior to Nevers & Callaghan's alleged judgment lien and superior to the alleged rights of the Castelló brothers, and that of the creditors generally, and this, in our opinion, can be done in no other way so satisfactorily as by causing issue to be joined in the consolidated suits and proceed to a hearing on the same at once.

It seems to us that the whole matter should be litigated in one proceeding as far as possible. Therefore the suit at law No. 563 will still be held in abeyance for a short time. The demurrers in Nos. 564 and 565 will be overruled and each of the parties required to answer fully by Monday morning next. The answer in No. 565 by Mr. Valdes may, if necessary, be coupled with a cross-bill asserting all his rights of ownership which he expects to introduce as proofs in the law suit No. 563.

The Castelló suit will also be held in abeyance until the determination of the principal issue between Valdes and the corporation, but an issue must be raised therein at once by proper answer and the demurrer will be overruled pro forma for that purpose, and the proofs therein will be taken immediately after the proofs in suits Nos. 564 and 565, and it may if necessary be consolidated for the purposes of final decree. We see no necessity for doing anything with reference to the rights of the Sanchez de Larragoiti heirs as they probably cannot be affected by anything we do in these matters.

The court now desires to notify all counsel and parties that it is not inclined to tolerate any interference with its program as here indicated, or at least with its determination to bring this unfortunate situation to a speedy end. Nor will it permit the pretended dis-

satisfaction or impatience of any of the parties to prevent such speedy determination of the matter. But this is not intended to mean that it is not willing and ready to receive all proper and respectful suggestions of modifications in the program as it progresses with a view to facilitating matters, but on the contrary it invites the aid and help of counsel and hopes that it will receive the same to the fullest extent that all counsel may be able to give it.

41 The Court has a lot of receiver's certificates and debts outstanding that are a lien superior at least to any claim Mr. Valdes can have in the premises, and it must protect them. As to whether or not such debts and receiver's certificates are superior to any rights Nevers & Callaghan may have, if they have any, is a question that will be determined. Nevers & Callaghan are respondents in suit No. 565 so their rights will be litigated and settled in the same decree, and they will be required to file an answer as their demurrer is also overruled pro forma.

The Court therefore, beginning on Tuesday morning next after the answers are in, will proceed without the intervention of an examiner or master to hear the evidence itself, and will settle the rights of the parties as best it can.

The Court will determine during the remainder of this week or during the week while it is taking the evidence, as stated, what it will do with the plant itself and whether it will continue it in the possession of a mere custodian under the present receiver or discharge the present receiver and appoint a new one as custodian or appoint a new one at a low salary and under a proper bond to make preparations to keep the plant as a going concern.

In any event it is suggested that if Mr. Valdes shall be held to be the owner of the machinery and the lease rights, he will be given possession. If he is held to be a mere general creditor and no lien is established against the premises, the rights of the parties in the property will be ordered sold as may be deemed best, and this with the least delay possible.

42 In other words, the object of the Court now is to get complete title in some one person or corporation in that property, or at least in the leasehold right therein.

It is here suggested that if anyone of the parties to this litigation can become possessed of the alleged rights of one or more of the others, even including the rights of the Sanchez de Larragoiti heirs, and pay or assume with the consent of the owners thereof the receivership debts, it will greatly simplify this badly mixed and unfortunate legal controversy, and the quicker the same is done, the better.

B. S. RODEY, *Judge.*

Amended Bill of Complaint.

(Filed July 22, 1909.)

To the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, in Chancery Sitting:

Central Altagracia, Incorporated, a corporation duly organized and existing under the laws of the State of Maine and a citizen of said State, brings this its bill of complaint against Ramón Valdes, who is a subject of the King of Spain residing in Porto Rico, and George C. Nevers, George B. Ackerson, and James G. Callaghan, as co-partners doing business under the firm name of Nevers & Callaghan, who are each and all citizens and residents of the city and State of New York.

And thereupon your orator, complaining, says that, while it is, as above alleged, organized and exists under the laws of the State of Maine, its principal and only business is the running of a factory for the grinding of sugar cane and production of sugar therefrom, situated in the Añasco Valley, near the city of Mayaguez, Porto Rico; and that it is duly authorized and licensed to carry on business within this jurisdiction by the Territorial Government called the "People of Porto Rico."

43 Your orator further alleges that during or about the month of March, A. D. 1907, finding itself in need of additional ready money to meet its maturing obligations, it negotiated a loan from the defendant Ramon Valdes, through its proper officers, for the sum of \$35,000 which it agreed to repay to said Valdes on or before the 1st day of April, 1908, with interest at the rate of 10% per annum, and as an additional consideration for the making of said loan, it was agreed by the managing officers of your orator that said Valdes should be chosen a Director and Vice President thereof at a salary of \$3,000 per year, which agreement was carried out.

Your orator further alleges that during or about the month of June, 1907, the same being at the end of the grinding season for that year, the Director of your orator, after taking the advice of expert engineers, determined that it was necessary for the welfare of the Company to raise an additional loan of \$30,000 for the purpose of repairing and re-arranging the machinery already in its factory and purchasing additional machinery, and the President and Treasurer of your orator went to New York City for the purpose of negotiating a loan of sufficient amount to cover the above needs and also to pay off certain indebtedness then existing including the debt of said defendant Valdes and the debt of said defendants Nevers & Callaghan, which has since been reduced to judgment as will hereinafter more fully appear; that upon their arrival in New York said President and Treasurer submitted their plan to defendant Valdes, who approved and agreed to the same, and thereafter during their sojourn in New York for the purpose aforesaid said President and Treasurer entered into negotiations with several parties as well as opening further negotiations with said defendant

Valdes, then Vice President of your orator as aforesaid; and pending the conclusion of their different endeavors to effect a loan a

44 preliminary agreement was arrived at with defendant Valdes whereby he was to advance to your orator the funds necessary to purchase the needed machinery and, if said officers of your orator were able to return said advances with certain commissions and interest before the 18th day of September, 1907, said Valdes was to accept the same, and in case of the failure so to return said advances, the same and such other advances as might be agreed upon thereafter were to be regarded as a refaccion debt and the power documents for that purpose were to be executed; that matters between your orator and said defendant Valdes remained in that condition until about the 15th day of October, 1907, at which time, said officers of your orator, not having been able to return the said advances, and further negotiations having resulted in an agreement between said defendant Valdes and the holders of a majority of the stock on behalf of your orator, the same persons also constituting a majority of the Board of Directors, that, in consideration of the promise of said defendant to make said loan and finance the Company, he should be elected a member of the Board of Directors and President of the corporation for a period of four years, or until the indebtedness of your orator to him should be paid off, at a salary of \$3,000 per annum, that he should have the right to appoint, subject to the approval of the Board, a Manager under him at a salary of \$2500 per annum, and that he should receive as a bonus for such financing a block of 150 shares of the capital stock of your orator of the par value of \$15,000, (which was all that was remaining in the treasury), the proper documents were duly drawn and executed as desired by said defendant for carrying into effect the arrangement aforesaid in the office of Curtis, Mallett-Prevost & Colt, of New York City, the said stock was transferred without further consideration, and said defendant Valdes was elected President he already being a member of the Board of Directors of your orator, and the former

President, F. L. Cornwell, Esq., was elected Vice-President.

45 But your orator alleges that after said defendant Valdes has obtained from the other officers of the Company the execution of the documents aforesaid he at once, even before the parties signing said agreement had left New York, began to claim that a part of said contract was that he should also name a majority of the Board of Directors and to urge upon the remaining Directors the recognition of that right, and upon the refusal of the recognition of the Board to accede to his wishes he proceeded arbitrarily to usurp the powers of the Board as hereinafter set forth.

Your orator further alleges that, after said defendant Valdes became President of your orator in the manner aforesaid he proceeded to control and manage its business without reference to the wishes, judgment or authority of its Board of Directors, to expend money for all purposes without the knowledge or authority of any member of said Board, to change the plans for the reconstruction of the factory without such knowledge or authority, to install an incompetent Chief Engineer in charge of the running of the man-

chinery against the protest of the other members of the Board upon the accidental death of the regularly appointed chief, and in all respects to manage the business of your orator according to his individual will and caprice, even objecting to the presence of any of the other officials of the Company in or about its factory when not accompanied by said Valdes. That from the time of the election of said Valdes as President as aforesaid until the present day not one dollar of the funds of the Company has passed through the hands of the Treasurer but every dollar thereof has been collected and disbursed by said Valdes, or by those acting under his direction, so that said Treasurer, in order to avoid responsibility for the usurping acts of said defendant Valdes over which he had no control, was forced to act under a provision of the by-laws of your
orator and ask the Board of Directors to allow him to sur-
46 render the performance of his duties as Treasurer to said Valdes by way of substitution, and has been ever since ignored in respect to such duties.

Your orator therefore alleges that said defendant Valdes never in fact loaned any amount to your orator beyond the first loan of \$35,000 hereinbefore referred to but had expended whatever amount he may have spent in your orator's business, with the exception of the price paid for a portion of the machinery purchased and some of the reconstruction work, without the knowledge, consent or authority of your orator's Board of Directors and without any part of the same passing through the treasury; that the total amount claimed to have been expended by said defendant in your orator's business is far in excess of any expenditure authorized or contemplated by said Board of Directors and far more than the financial condition of your orator warranted; and that a large portion thereof has been expended without benefit or advantage to your orator.

Your orator further alleges that after the making of the preliminary agreement between the officers of your orator and said Valdes in New York and the beginning of the purchase of machinery by him and making of repairs in the factory the said Valdes assumed the active and entire management and control of the business and the financing of your orator, sent his agents to your orator's factory to take charge there and, through said agents spread throughout the community of Mayaguez the report that said defendant had been obliged to take over the property and business of your orator on account of the inexperience, incompetence and extravagance of the President and Treasurer formerly in control of its affairs, that said individuals had been removed and had no further connection with said business, and that said defendant had purchased and was the owner of said factory and machinery and all the property of your orator included in its said plant, the said defendant all the while well knowing that said individuals were

47 still respectively Vice-President and Treasurer of your orator and still members of its Board of Directors; all of which acts tended greatly to the injury of your orator in depriving those who would otherwise have dealt with it of all confidence in the stability of its business and tending to cause suspicion of the character and ability

of its officials, other than said President. Thereby destroying its credit as an entity, which it had built up and theretofore enjoyed generally in this community and more especially with its colonos.

Your orator further alleges that said defendant, instead of carrying out his said agreement with your orator to advance money to it for the purchase of machinery, proceeded to contract for and purchase machinery in his own name, to have the same shipped to himself individually as consignee, and to erect the same in the factory which he then and since has claimed to be his own and to which he has now brought a suit at law in this court to establish his title, yet he has at all times claimed and still claims that your orator is indebted to him for the price of said machinery. That said defendant also proceeded to procure and enter into contracts for the grinding of sugar cane in his own name, and the leasing of the Hacienda Carmelita in Cabo Rojo, instead of in the name of your orator, and in some instances the cane so bought has been entered in the books of your orator as purchased at a higher price than that named in the individual contract with the defendant; all which was in direct violation of his duty to your orator as its President and managing officer and to the financial injury of your orator.

Your orator further alleges that said defendant Valdes before the beginning of the grinding season which is just closing was guilty of inexcusable extravagance in the work preparatory to such season and expended large sums in excess of what was reasonably necessary for that purpose; that after the beginning of said grinding

48 the management of orator's factory, under the direction of said defendant as President, has been both extravagant and incompetent, that soon after the season commenced he discharged from orator's employment the only employee competent to manage the sugar-making department, leaving the same in charge of persons wholly inexperienced and without skill in the handling of such machinery of the complicated and up-to-date kind contained in said factory; that he has continued as Chief Engineer during the whole of the crop a man known to him and demonstrated by his work to be incompetent; that he has so mismanaged the service of cane by the railroad cars that colonos have been unable to cut and haul cane to said cars with any regularity whereby the service of cane to said factory has been irregular causing increased expense in grinding and decreased results in sugar; that in the midst of the grinding season he absented himself from the Island for a period of nearly two months, during which time his manager left in charge was without authority or discretion in action as well as without funds properly to conduct your orator's business; that, in short, the extravagance and incompetence of the management of said defendant was such that, notwithstanding the perfect condition of the machinery in said factory and the unusual high price of sugar during all of said grinding season, the operations of your orator's factory show practically no profit and, considered in connection with the general expenses of your orator for the year show a positive loss, and the amount of sugar produced only three-fourths as much as

either of the previous years of your orator's existence, notwithstanding the increase in amount and improvement in arrangements of its machinery over previous years; and that said defendant has allowed the existing cane contracts of your orator to lapse, has made no successful efforts to extend these which have expired, and the few new ones obtained have been made only for the one crop which is now at an end.

Your orator further alleges that said defendant Valdes expended several thousands of dollars in the purchase of scales for the 49 weighing of cane and erected the same at various places along the line of the railroad, but said expenditure resulted practically without benefit as only a small amount of cane was purchased at any of said scales on account of the refusal of said defendant on behalf of your orator to pay the competitive rates which other buyers were paying, while on one occasion purchasing outright cane upon which your orator suffered a considerable loss.

Your orator further alleges that said defendant, since occupying the office of President, has purchased in his own name a large amount of the indebtedness owing by your orator at a large discount from the face value thereof, but instead of allowing your orator the benefit of the reduced price at which the same was acquired, and instead of using said money for the advantage of your orator in acquiring cane contracts, of which your orator was in great need, said defendant has demanded and is now demanding of your orator's Board of Directors that entries be authorized in its books of account transferring said indebtedness into the name and favor of said defendant for the amount of its full face value and interest.

Your orator further alleges that in the month of November, 1907, after defendant and his agents had been in full possession and control of the books and accounts of your orator since the preceding August, defendant made an offer of sixty cents on the dollar of the par value of orator's capital stock for a controlling interest therein, but after being in full control and management of all your orator's business during an entire sugar season, although he claims that said season has been a prosperous and successful one, defendant has stated that said stock is worth practically nothing.

Your orator further alleges that on the 16th day of May, 1908, judgment was recovered in this court by the said defendants Nevers & Callaghan against your orator for the sum of about \$17,000 upon which execution has been issued and levied upon said machinery and factory of your orator, yet said defendant Valdes as 50 President of your orator has done nothing to avoid said execution and levy. That, although said defendant has had entire charge and control of the financial operations of your orator since his election as President, and has been charged with the duty as such of providing for means of paying the most pressing indebtedness of your orator, yet he has made no provision for the payment to himself of the interest now claimed to be due upon the loans claimed to have been made by him to your orator, or under the contract alleged to constitute a conditional sale to him of your orator's plant and machinery, and is even now bringing a suit in

this court to declare a forfeiture of the title of your orator to its said property because of the non-payment of said alleged interest, as hereinafter stated. That the suit at law aforesaid, which is No. 563 on the Law Docket of this Court, is based upon one of the documents executed between your orator and said defendant, Valdes, at the office of Curtiss, Mallet-Prevost & Colts in New York City at the time said Valdes agreed to make the additional loan to your orator as hereinbefore alleged, but the complaint therein does not set forth sufficient of the facts involved in said transaction to allow your orator to make the defense thereto which equity and good conscience require; that the other document executed at the same time between the same parties and all the facts and circumstances surrounding the transaction conclusively show that said transaction in fact constituted a loan from said Valdes to your orator, which said Valdes claimed to be in the nature of a refaccion loan, and not a sale of property by said Valdes to your orator, conditional or otherwise, as your orator had up to that moment been the undisputed owner of said property and executed in favor of said Valdes the document which is claimed to have conveyed title thereto to said Valdes solely and only for the purpose of aiding said Valdes in his endeavor to obtain refaccion security upon said property for his said loans, and

51 not with any intention or design on the part of either party at that time to obtain title thereto. Wherefore your orator alleges that by the further prosecution of said suit at law great and irreparable injury may be done to your orator, and such further prosecution thereof should be enjoined by the order and injunction of this honorable court.

Your orator further alleges that, in case of each of the loans so made to it by defendant Valdes as hereinbefore set forth, the said Valdes required, demanded and obtained from your orator as a part of each loan agreement the payment as compensation for the use of the money loaned a rent or rate of interest greater than was then or is now allowed by law to be charged or collected, although a part of such compensation or rent was, in order to avoid the penalties of usury, disguised in the form of salary or stock compensation, yet your orator avers that said loan contracts were each and all in truth and in fact usurious, and for that reason said defendant Valdes is not entitled to collect any part of the interest stipulated for in said contract, but all of said interest now accrued, as well as any which might otherwise accrue in the future, has been wholly forfeited, and said defendant is also liable to be required to repay to your orator whatever sums he may have received as the salary stipulated for as part of the rent or compensation for said loans.

Your orator further alleges that there are practically no lands annexed to, or which pertain to, the factory of your orator which can supply the same with cane for the purpose of grinding, so that it is necessary in order that said factory may grind cane and manufacture sugar that your orator should have contracts with the growers of cane for the delivery of the same for grinding, which contracts are usually made in the months of June and following; that said Valdes has failed to provide contracts for cane to the extent

needed by your orator as above set forth, and that further delay in the making of the same will endanger the business of your 52 orator and render it liable for large loss; that for the obtaining of a sufficient number of such contracts advances of considerable quantities of money to the cane growers will be necessary; that the value of your orator's said property depends on its carrying on its said business and continuing as a going concern; that your orator has a large unsecured indebtedness beside that owing to defendant Valdes, and, unless a receiver is appointed, its said creditors will severally bring suits and recover judgments as defendants Nevers and Callaghan have done; and that such judgments will be followed by levy and sale thereunder of separate parcels of your orator's property for a small fraction of their real value; by which means the property of your orator will be frittered away to the great damage of both creditors and stockholders.

Your orator therefore avers that a Receiver should be appointed by and under the authority of this court to take charge and control of all and singular the property of your orator and to carry on its said business for the benefit of its creditors until its debts can be discharged or properly funded so that both creditors and stockholders may be secured or paid.

To the end, therefore, that your orator may have that relief which can only be obtained in a court of equity, and that defendant Ramon Valdes and the defendants George C. Nevers, George B. Ackerson and James C. Callaghan, as copartners under the name of Nevers & Callaghan, may answer this bill, but not upon oath, the benefit whereof is hereby expressly waived; that the transaction between your orator and defendant Valdes, which was consummated by the execution of the documents aforesaid at the office of Curtiss, Mallet-Prevost & Colt in New York City, one of which documents is the basis of the suit No. 563 on the law side of this court, as hereinbefore alleged, may be decreed to have constituted a loan of money and not a sale of property; that said loan may be decreed to have been made at a usurious rent or rate of interest, and in consequence 53 thereof all interest thereon already accrued or hereafter to accrue to have been forfeited; that said defendant Valdes may be enjoined pendente lite from further proceeding with said cause No. 563 on the law side of this court and said injunction by the final decree herein be made perpetual; that said defendant Valdes may be decreed to have purchased whatever indebtedness of your orator to third parties he may be found by the final decree to own as trustee for and on behalf of your orator and be limited in any recovery from your orator on account thereof to the value or amount found by the court to have been paid by him therefor; that this court may ascertain and determine from the evidence to be produced before it what amount of money damage your orator has sustained by reason of the incompetence, mismanagement and unauthorized and wrongful acts of said defendant Valdes, pretending to act under his authority as President or otherwise and deduct the same from whatever amount of indebtedness may be found due the defendant on final hearing and that defendants Nevers & Callaghan

may be enjoined from enforcing the execution upon their judgment against the property of your orator pending the possession of the same by the Receiver of this court and until its further order; that a Receiver may be appointed for the purposes and responsibilities of receiver in such cases; that the defendants and all other persons may be enjoined from interfering with the possession or control of said receiver; and that your orator may have such other and further relief in the premises as equity may require and to your honor may seem meet.

May it please your Honor to grant unto your orator a writ of subpoena directed to the said defendants, Ramon Valdes, and George C. Nevers, George B. Ackerson, and James G. Callaghan, as co-partners doing business under the firm name of Nevers & Callaghan, commanding them at a certain time and under a certain penalty therein to be limited, personally to be and appear before this 54 honorable Court, then and there to answer to this bill of complaint, and to stand to, perform and abide by such further orders, directions and decrees as to your Honor shall seem meet in the premises.

And your orator will ever pray,

N. B. K. PETTINGILL,
F. L. CORNWELL,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
District of Porto Rico:

F. L. Cornwell, being first duly sworn, says that he is Vice-President as well as counsel for the complainant Company, that its President Ramon Valdes, is one of the defendants, that he has read the foregoing bill and knows its contents and the statements therein made are true of his own knowledge.

F. L. CORNWELL.

Sworn to and subscribed before me, this 22nd day of July, 1909.

JOHN L. GAY,
Clerk U. S. Dis. Court.

Journal Entry, July 24, 1908.

No. 564. Equity. San Juan.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, INC.

Now comes N. B. K. Pettingill, of counsel for defendant in the above entitled cause and files Answer and two Exhibits marked respectively "A" and "B" to bill of Complaint herein.

(Filed July 24, 1909.)

RAMÓN VALDES

vs.

CENTRAL ALTAGRACIA, INCORPORATED.

The Answer of Central Altagracia, Inc., to the Bill of Complaint of Ramon Valdes, Complainant.

This defendant now and at all times hereafter saving to itself all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties or imperfections in said bill of complaint contained, for answer thereto, or to so much thereof as this defendant is advised it is material and necessary for it to make answer to, answering says:

I.

Defendant admits the truth of the allegations contained in paragraphs I and II of said bill of complaint, except the allegation that the complainant, Ramon Valdes, is a resident of the Island of Porto Rico, which allegation defendant denies and alleges on the contrary that said complainant is a resident of the city and State of New York, United States of America.

II.

Further answering defendant admits that on or about the date alleged in paragraph III of the complaint it entered into a written contract with the complainant the terms of which are substantially set forth in paragraphs III, IV, V and VI of said bill of complaint; but defendant denies that said contract was in its nature one of conditional sale or that its legal effect was to conditionally sell, assign or transfer to defendant the property in paragraph III described, or any property whatever. Defendant on the contrary alleges that said

contract set forth in the paragraphs aforesaid of said bill of

56 complaint is one of two contracts contemporaneous in time

and forming in fact parts of one and the same transaction between complainant and defendant; and that said transaction in truth and in fact constituted an agreement for a loan from complainant to defendant for the principal sum of \$65,000, which was to be repaid with interest at the rate of 10% per annum, payable semi-annually, said principal sum being payable in four equal installments at the times and in the manner set forth in paragraphs IV and V of said bill of complaint.

Defendant further alleges that the sum of \$35,000, part of said above-mentioned sum of \$65,000 had previously during the year 1907 been loaned by complainant to defendant under an agreement whereby the same was to be repaid to complainant in the month of April, 1908; that in the month of August, 1907, defendant, being in need of additional funds with which to purchase new machinery and remodel its plant, entered into negotiations with several parties in

the City of New York, including the complainant Valdes, who was then Vice-President of the defendant, for the purpose of obtaining a loan of sufficient amount to serve the purposes aforesaid and also to pay off certain indebtedness then existing, including the debt of \$35,000 to said complainant which was not yet due; that, pending the different endeavors of the officials of this defendant to effect the loan aforesaid, a preliminary agreement was entered into by said officials of defendant with said complainant, whereby the latter was to advance to defendant the funds necessary to purchase the needed machinery, and if said officers of defendant were able to return said advances with certain commissions and interest and also the said sum of \$35,000 with its interest before the 15th day of September, 1907, complainant was to accept the same, but in case of the failure so to return the above amounts, the same and such other advances

as might be thereafter agreed upon up to said sum of \$65,000
57 were to be regarded as a refaccion debt and the proper documents for that purpose were to be executed; that matters between complainant and defendant remained in the above condition until about the 15th day of October, 1907, and at that time, the officials of defendant not having been able to return to complainant the several sums aforesaid, further negotiations resulted in an agreement between complainant and defendant upon the following terms, to wit: that, in consideration of the promise of complainant to make said loan and finance the Company, he should be elected a member of the Board of Directors and President of the Corporation for a period of four years, or until said indebtedness of defendant to him should be paid off, with a salary of \$3,000 per annum, that he should have the right to appoint, subject to the approval of the Board, a Manager under him at a salary of \$2,500 per annum, and that he should receive as a bonus for such financing a block of 150 shares of the capital stock of defendant of the par value of \$15,000 (which was all that was remaining in the treasury) that thereafter complainant caused to be prepared in the office of Curtis, Mallet-Prevost & Colt of New York City, two certain documents in the form desired by him for carrying into effect the arrangement aforesaid, one of which documents was in form a conveyance by defendant to complainant of the property described as aforesaid, in complainant's bill, and the other was the document described in paragraphs III, IV, V and VI thereof aforesaid; and that the purpose and design of said documents and the legal effect of the same was to evidence a loan of money and not a conveyance of property, conditional or otherwise, as is alleged in complainant's bill of complaint. All of which will more fully appear from true and correct copies of said documents herewith filed as Exhibits "A" and "B" which are prayed to be considered as a part of this answer.

III.

Defendant denies that it went into possession of said premises and factory and took possession of said machinery and contract of lease by virtue of said contract of November 2, 1907, as alleged in paragraph VII of complainant's bill, but on

contrary alleges that it was already in possession of the property so described under an undisputed title and had been in such possession from the time said property had been acquired by it, by purchase from other parties, and that the complainant had never been in possession of, or had any control over or right to, the same.

IV.

Defendant admits that according to the terms of said contract the first installment to be paid thereunder together with interest on the total debt of \$65,000 from the date said contract became due on the 1st day of April, 1908, as alleged in paragraph VIII of complainant's bill, but denies that said contract was valid and enforceable according to its terms for the reason that, as hereinbefore set forth, complainant required, demanded and obtained from defendant as a part of each loan agreement the payment as compensation for the use of the money loaned a rent or rate of interest greater than was then or is now allowed by law to be charged or collected, although a part of such compensation or rent was, in order to avoid the penalties of usury, disguised in the form of salary or stock compensation; but defendant avers that said loan contracts were each and all in truth and in fact usurious, and for that reason complainant has forfeited all right to collect from defendant any part of said indebtedness or to enforce said contract against this defendant in any respect, or at least any and all interest on said indebtedness now accrued or hereafter to accrue has been wholly forfeited by the complainant; and that, therefore, in either of said events, as under the terms of said contract the first installment of principal to become due thereunder may be upon request extended for the further period

59 of one year, no cause of action had accrued to complainant at the time of the commencement of this suit or of the suit at law referred to in said bill of complaint.

V.

And for further answer defendant denies that complainant is entitled to the remedy or relief asked for in his bill of complaint herein or in his complaint in said suit at law No. 563; first, because by virtue of said contracts and agreement above set forth in paragraph II of this answer complainant obtained in law neither the legal title to the property referred to nor any lien or preference whatever thereon but became merely a general creditor of defendant to whatever amount this court may finally determine may be due thereunder, if anything; and second, because defendant became unable and was prevented from carrying out the terms of said agreement in so far as the payment of the installments and interest, which would have been due to complainant had he on his part faithfully complied with the terms of said agreement, in consequence of the wrongful acts and omissions of the complainant himself in respect to the defendant and its business and the heavy damage thereby inflicted upon it as herupon to be specified.

Defendant alleges that, after complainant became the President

of defendant corporation in pursuance of the said agreement set forth in said paragraph II hereof, he proceeded to control and manage its business without reference to the wishes, judgment or authority of its Board of Directors, to expend money for all purposes without the knowledge or authority of any other member of said Board, to change the plans for the reconstruction of the factory without such knowledge or authority, to install an incompetent chief engineer in charge of the running of the machinery against the protest of the other members of the Board in consequence of the accidental death of the regularly appointed chief, and in all respects to manage

the business and finances of defendant according to his individual will and caprice, even objecting to the presence of

any of the other officials of the company in or about its factory when not accompanied by complainant himself; that from the time of the election of complainant as President as aforesaid until the appointment of the receiver herein not one dollar of the funds of the Company has passed through the hands or within the control of the Treasurer of defendant corporation, but every dollar thereof has been collected and disbursed by complainant, or by those acting under his directions, so that defendant's Treasurer, in order to avoid responsibility for the usurping acts of complainant over which he had no control, was forced to take advantage of a provision of defendant's by-laws and ask its Board of Directors to allow him to surrender the performance of his duty as treasurer to complainant by way of substitution, and has been ever since ignored by complainant in respect to such duties. Defendant further avers that after the making of the preliminary agreement between complainant and defendant in New York and the beginning of the purchase of machinery by complainant and the making of repairs in defendant's factory, complainant assumed the active and entire management and control of the business and the financing of defendant, sent his agents to defendant's factory to take charge there and, through said agents, spread throughout *of* the community of Mayaguez the report that complainant had been obliged to take over the property and business of defendant on account of the inexperience, incompetence and extravagance of the President and Treasurer formerly in control of its affairs, that said individuals had been removed from office and had no further connection with defendant's business, and that complainant had purchased and was the owner of defendant's factory, machinery and all its property included in said plant, though complainant all the while well knew that said individuals were still respectively Vice-President and Treasurer of defendant and still

members of its Board of Directors.

61 Defendant further avers that complainant, instead of carrying out the agreement with defendant hereinbefore set forth to advance money to it for the purchase of machinery, proceeded to contract for and purchase machinery in his own name, to have the same shipped to himself individually as consignee, and to erect the same in the factory which he then and since has claimed to be his own and for the possession of which he has brought the suit at law described in his bill of complaint, while then and still claim-

ing that defendant is indebted to him for the price of said machinery, and that complainant also proceeded to procure and enter into contracts for the grinding of sugar cane and the leasing of the Hacienda Carmelita in Cabo Rojo in his own name, instead of in the name of defendant, and in some instances the cane so bought has been entered in the books of defendant as purchased at a higher price than that named in the individual contract with complainant, that before the beginning of the grinding season of 1908 complainant was guilty of inexcusable extravagance in the work preparatory to the grinding of the cane crop at defendant's factory and expended large sums in excess of what was reasonably necessary for that purpose; that after the beginning of said grinding complainant's management of said factory has been both extravagant and incompetent; that soon after the season commenced he discharged from said factory the only employee competent to manage the sugar making department, leaving the same in charge of persons wholly inexperienced and without skill in the handling of the complicated and up-to-date machinery contained in said factory; that he has continued as chief engineer during the whole crop a man known to him and demonstrated by his work to be incompetent; that he has so mismanaged the service of cane by the railroad cars that colmos have been unable to cut and haul cane to said cars with any regularity whereby the service of cane to said factory has been

62 continuously irregular, causing increased expense in grinding and decreased results in sugar; that in the midst of grinding season he absented himself from the Island for a period of nearly two months, during which time the manager left in charge by him was without authority or discretion in action as well as without funds properly to conduct the business of defendant; that, in short, the extravagance and incompetence of the management of complainant was such that, notwithstanding the perfect condition of the machinery in said factory and the high price of sugar during all of said grinding season, the operations of defendant's factory for that season showed practically no profit and, considered in connection with the general expenses of defendant for the year, showed a positive loss, and the amount of sugar produced was only three-fourths as much as either of the previous years defendant had operated, notwithstanding the increase and amount and improvement in arrangement of its machinery compared with previous years; and that complainant has also allowed the existing cane contracts of defendant to lapse, has made no successful efforts to extend those which have expired, while the few new contracts obtained have been made only for the one crop above referred to.

And defendant avers that each and all of the acts of complainant above set forth were in direct violation of his duty to defendant as its president and managing officer and tended greatly to the financial injury of defendant by depriving these who would otherwise have dealt with it of all confidence in the good management or stability of its business and causing doubt of the character and ability of its officials, whereby its credit and the confidence of its

colonos and the community in general, which it had hitherto enjoyed, was destroyed and the business for which defendant was organized practically ruined.

63

VI.

Defendant further denies that complainant was at the time of the beginning of this suit, or is now, entitled to the immediate possession of said premises, factory, machinery and lease or that he was at said time, or now is, the sole and exclusive owner of the same, as alleged in paragraph IX and X of his bill.

VII.

Defendant admits the allegations contained in paragraph XII and XIII of said bill of complaint and admits the allegations of paragraph XIV and XV except as to the further allegation that it was insolvent at the time of the filing of said bill, which allegation it most positively denies.

Wherefore, this defendant having fully answered, confessed, traversed, and avoided or denied all the matters in the said bill of complaint material to be answered, according to his best knowledge and belief, humbly prays this honorable Court to enter its judgment, that this defendant be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained and for such further and other relief in the premises as to this honorable Court may seem meet and in accordance with equity.

CENTRAL ALTAGRACIA, INCORPORATED,
F. L. CORNELL, *President.*

F. L. Cornwell, being first duly sworn, says: that he is President as well as counsel for the above named defendant, that he has read the foregoing answer and knows its contents and that the matters therein set forth are true.

F. L. CORNWELL.

Sworn to and subscribed before me, this 24th day of July, 1909.

JOHN L. GAY,
Clerk U. S. Dist. Court.

64

(*Translation of Exhibit "A" to Answer.*)

(Filed July 24th, 1909.)

In the city, County and State of New York, United States of America, on the twenty-eighth day of October, nineteen hundred and seven (1907) before me, Augustine P. Barranco, Notary Public for Kings and New York Counties, and before the witnesses Edwin G. Lewis and Hugo Kolman, qualified by law and known to me, the following persons appeared, who are also known to me and who understand the Spanish language:

1. Frederick L. Cornwell, of lawful age, bachelor, Attorney at Law, resident of Mayaguez, Porto Rico, President of and representing the Central Altamaria, Incorporated, a corporation duly organized and existing under the laws of the State of Maine, United States of America, as set forth in the certificate of incorporation which I have had before me and was filed in the respective Department of State on the twenty-third (23) day of August, nineteen hundred and five (1905). He was elected to the office which he is discharging, at a meeting of the Board of Directors of the Company held on the twenty-eighth day of December, nineteen hundred and six (1906) as set forth in the respective minutes of the proceedings which I have had before me. The authority under which he acts appears from the resolution adopted at a general meeting of stockholders of the Company held on the twenty-fourth (24th) day of October, nineteen hundred and seven (1907), the record of the proceedings of which said meeting I certify to have seen. The said resolution, the Spanish translation of which I certify to be correct, reads literally as follows:

"Whereas, at a meeting held by the Board of Directors of this Company, on the twenty-third (23rd) day of October, nineteen hundred and seven, the following resolutions were adopted:

65 "Whereas, it is convenient to the interests of this Company to dispose of its rights and properties in and to the Mill Central Altamaria, for the purpose of paying such amounts as have been advanced to it by Ramon Valdes y Cobian:

"Therefore, be it resolved, that this Company do sell, transfer and assign to Ramon Valdes y Cobian, for the amount of Sixty-Five Thousand Dollars (\$65,000.00) which it owes him, the contract of lease and other rights which the Company acquired from Salvador and Gerardo Castelló Camps, which are the same as were acquired by the latter from Joaquin Sanchez de Larragoiti; and also such rights as belong to this Company in and to the machinery and appurtenances on the premises of the said Central Altamaria at the time of the transfer of the said contracts of lease to the Company; as well as such rights as belong to this company in and to the machinery and appurtenances introduced by it thereafter on the said premises.

"Be it further resolved, that the President of this Company be, and he is hereby authorized, empowered and directed to execute and sign, in the name and on behalf of the Company, all such public documents or instruments as may be necessary, convenient or desirable, for the purpose of carrying the preceding resolution into effect.

"Therefore, it is resolved to affirm and ratify the preceding resolutions and the purchase which the Company has made from Ramon Valdes y Cobian of the contract of lease and all other rights therein described, and to consider the said resolutions as the acts and resolutions of the stockholders of this Company."

2. Don Ramón Valdes y Cobian, of lawful age, married, capitalist and a resident of this City, appears herein in his own behalf.

The President of the Central Altamaria Incorporated, hereinafter

called The Company, and Don Ramon Valdes y Cobian, hereinafter called Valdes y Cobian, stated:

(1) That on the eighteen- (18th) day of January, nineteen hundred and five (1905), Don Joaquin Sanchez de Larragoiti, celebrated in Paris, France, a contract of lease with Don Salvador Castelló, extending the same on the sixth (6th) day of June, of the same year, which said documents were reduced to public instruments, by means of the notarial record which literally reads as follows:

66 "Number three hundred and fifty-four (354). In the City of Mayaguez, on the thirtieth (30th) day of June, nineteen hundred and five (1905), before Mariano Riera Palmer, lawyer and Notary Public of Porto Rico, residing in this City, and before the witnesses hereinafter named, appears Don Salvador Castelló y Camps, of lawful age, bachelor, property owner, resident of this City—

"I certify to his identity, profession and residence; he assures me that he is in the full enjoyment of his civil rights and having, in my judgment, the legal capacity necessary for this act, states:

First: That under date of January the eighteenth (18th) ultimo and while in the city of Paris (France), he executed, together with Don Joaquin Sanchez de Larragoiti, resident of the said city of Paris, a private document which he exhibits to me in this act, and which being literally copied reads as follows:

"'Paris, January 18, 1908. Between the undersigned, Don Joaquin Sanchez de Larragoiti, resident of Paris, and Don Salvador Castelló resident of Mayaguez, Porto Rico, and visiting in this city of Paris, the following has been agreed to:

"'1st. Don Joaquin Sanchez de Larragoiti, owner of the Central Altamaria and twenty-two (22) cuerdas of land annexed thereto, situated in Mayaguez, Porto Rico, consents to grant to Don Salvador Castelló the said Central and the twenty-two (22) cuerdas of land for the exploitation thereof, for a term of (10) years.

"'2nd. Under no circumstances and in no respect shall the said Don Salvador Castelló contract any obligation whereby the said Don Joaquin Sanchez de Larragoiti shall have the least personal responsibility, nor shall the said Don Salvador Castelló under no circumstance and in no respect alienate, mortgage or encumber the Central and the twenty-two (22) cuerdas annexed thereto, with any obligation or lien that shall affect the said property.

"'3rd. In brief, the right and powers that Don Joaquin Sanchez de Larragoiti grants unto Don Salvador Castelló, are to operate and work the said property for his account, and introduce therein such machinery as he may deem convenient; which said machinery, at the end of the years mentioned in Article 1st hereof, shall become the exclusive property of Don Joaquin Sanchez de Larragoiti.

"'4th. In consequence of the Articles aforementioned, the said Don Salvador Castelló shall have the right to grind, and benefit by, the largest possible quantity of sugar cane, in the said Central Altamaria.

"'5th. The buildings shall be covered by Fire Insurance and in

case of an unfortunate accident the amount of insurance shall be applied to the reconstruction of such as may be destroyed.

“6th. The expense of fire insurance on the Central, as well as taxes on the property, shall be deemed to be operating expenses and shall be deducted each year from the net profits that may be derived from the said exploitation; but in no case shall the said Don Salvador Castelló claim any liability or part thereof, from the owner Don Joaquin Sanchez de Larragoiti.

“7th. As already stated in Article 3rd. Don Salvador Castelló may add any machinery or apparatus to those now existing in the said Central Altagracia. In cases of expenses of this nature for new machinery or repairs, the whole shall be for account of the operators, and neither Don Salvador Castelló nor any other person shall have the right to demand any return or payment of any part of the expenses that may originate from said repairs, nor shall such new machinery as Don Salvador Castelló may consider advisable to add to the machinery now existing, be deemed to be expenses, and therefore no claim or deduction shall be made from such profits as may accrue to Don Joaquin Sanchez de Larragoiti out of the exploitation of the said property.

“8th. Upon the expiration of the term agreed on under this contract, any improvement or machinery installed in the said Central shall remain for the benefit of Don Joaquin Sanchez de Larragoiti; and Don Salvador Castello shall have no right to claim anything for the improvements made.

“9th. After each crop such profits as may be produced by the Central Altagracia shall be distributed and twenty-five per cent (25%) thereof shall be immediately paid to Don Joaquin Sanchez de Larragoiti, as equivalent for the rental of the said Central and of the twenty-two (22) cuerdas of land surrounding the same. The remaining seventy-five per cent (75%) shall belong to Don Salvador Castelló; who may interest therein whomsoever he may wish either for the whole or part thereof.

“10th. In case of death of Don Joaquin Sanchez de Larragoiti, this contract shall be respected by his heirs. In case of death of Don Salvador Castelló his brother, Gerardo Castelló, shall take his place and be a contracting party, if he so desires. Otherwise the plantation, in such a condition as it may be in at his death, shall immediately pass into possession of its owner Don Joaquin Sanchez de Larragoiti.

“11th. Don Joaquin Sanchez de Larragoiti shall authorize his present manager and attorney in fact, in Mayaguez, Porto Rico, Don Joaquin Fornabello, for the purpose of giving possession of the property “Altagracia” and of the lands thereof to Don Salvador Castelló.

“12th. It is the will of the contracting parties that this private contract shall have the same force as if it were a public instrument, to which it may be reduced by any one of the said parties, and the expenses thereof shall be for account of the party who so reduces it.

68. "This contract was read and approved by the contracting parties, who sign the same in duplicate, in Paris, on the eighteenth (18th) day of January, nineteen hundred and five, (1905).

"It is further agreed as an additional condition that Don Joaquin Sanchez de Larragoiti agrees with Don Salvador Castelló on the term of one (1) year from and after this day to begin work on the Central "Altagracia." Upon the expiration of this term, if the necessary improvements shall not have been begun by him, then this contract shall be null and void, and no cause of action shall accrue to any of the contracting parties by reason thereof. S. Castelló, J. Sanchez.

"The document herein above inserted is a true copy from the original thereof, to which I certify and refer, and which I return to the party producing same, signed and sealed by me."

"Second: That under date of the sixth (6th) instant they extended the contract hereinbefore inserted, by the condition which being literally copied reads as follows:

"Having celebrated a contract with Don Salvador Castelló, in this city, on the eighteenth (18th) day of January of the current year, for the exploitation, for a term of ten (10) years, of my property named "Altagracia," situated in Mayaguez, Porto Rico, I make known by this document which I desire to have the same force as if it were public, that the said term of ten (10) years is hereby extended to twenty (20) years; it being well understood that this extension does not modify nor alter the other clauses of the contract. Paris, June sixth (6th), nineteen hundred and five (1905). J. Sanchez."

"It is a true copy from the original thereof, to which I certify and refer, and which I return, signed and sealed by me."

"Third: And the party hereto, Señor Castelló, availing himself of the right in him vested under Paragraph 12 of the document hereinabove inserted, by this act he reduces the said private contract to a public instrument for the purpose of having the same duly recorded in the proper Registry of Property, to which end a copy hereof shall be filed in said office.

"He so covenants and signs with the witnesses Don Federico Philippi and Don Avelino Irizani, residents of this city, upon my reading this instrument to them at the same time and informing them of their right to do so for themselves, to all of which I certify. S. Castelló.—F. Philippi.—Avelino Irizani.—Signed Ledo, Mariano Riera Palmer.

"2. That Don Salvador and Don Gerardo Castelló, by instrument executed in Mayaguez, on the first (1st) day of July, nineteen hundred and five (1905), before Mariano Riera Palmer, Lawyer and Notary Public, assigned to the Central Altagracia Company, their rights and actions under the contracts hereinbefore inserted, as set forth in the public instrument immediately transcribed as follows:

69. Paris, January 18, 1908.—Between the undersigned Don Joaquin Sanchez de Larragoiti, resident of Paris, and Don

Salvador Castelló, resident of Mayaguez, Porto Rico, and visiting in this city of Paris, the following has been agreed to: 1st, Don Joaquin Sanchez de Larragoiti, owner of the Central Altagracia and twenty-two (22) cuerdas of land annexed thereto, situated in Mayaguez, Porto Rico, consents to grant to Don Salvador Castelló the said Central and the twenty-two (22) of land for the exploitation thereof for a term of ten (10) years.

2nd. Under no circumstances and in no respect shall the said Don Salvador Castelló contract any obligation whereby the said Don Joaquin Sanchez de Larragoiti shall have the least personal responsibility, nor shall the said Don Salvador Castelló, under no circumstances and in no respect alienate, mortgage or encumber the Central and the twenty-two (22) cuerdas of land annexed thereto, with any obligation or lien that shall affect the said property.

3rd. In brief, the right and powers that Don Joaquin Sanchez de Larragoiti grants unto Don Salvador Castelló are to operate and work the said property for his account, and introduce therein such machinery as he may deem convenient, which said machinery, at the end of the years mentioned in Article 1st, hereof, shall become the exclusive property of Don Joaquin Sanchez de Larragoiti.

4th. In consequence of the above mentioned articles the said Don Salvador Castelló shall have the right to grind, and benefit by, the largest possible quantity of sugar cane in the said Central "Altagracia."

5th. The building shall be covered by Fire Insurance and in case of an unfortunate accident, the amount of insurance shall be applied to the reconstruction of such as may be destroyed.

6th. The cost of Fire Insurance on the Central, as well as taxes on the property, shall be deemed to be operating expenses and shall be deducted each year from the net profits that may be derived from the said exploitation; but in no case shall the said Don Salvador Castelló claim any liability or part thereof from the owner Don Joaquin Sanchez de Larragoiti.

7th. As already stated in Article 3rd, Don Salvador Castelló may add any new machinery or apparatus to those now existing in the said Central Altagracia. In case of expenses of this nature for new machinery or repairs, the whole shall be for account of the operators, and neither Don Salvador Castelló nor any other person shall have the right to demand any return or payment for any part of the expenses that may originate from such repairs, nor shall such new machinery as Don Salvador Castelló may consider advisable to add to the machinery now existing be deemed to be expenses; and, therefore, no direct claim or deduction shall be made from such profits as may accrue to Don Joaquin Sanchez de Larragoiti out of the exploitation of the said property.

8th. Upon the expiration of the term agreed on
70 under this contract, any improvement or machinery installed
in the said Central shall remain for the benefit of Don

Joaquin Sanchez de Larragoiti; and Don Salvador Castelló shall have no right to claim anything for the improvements made.

9th. After each crop, such profits as may be produced by the Central "Altagracia" shall be distributed, and twenty-five per cent (25%) thereof shall be immediately paid to Don Joaquin Sanchez de Larragoiti, as equivalent for the rental of the said Central and of the twenty-two (22) cuerdas of land surrounding the same. The remaining seventy-five per cent (75%) shall belong to Don Salvador Castelló, who may interest therein whomsoever he may wish either for the whole or part thereof.

10th: In case of death of Don Joaquin Sanchez de Larragoiti this contract shall be respected by his heirs. In case of death of Don Salvador Castelló, his brother, Gerardo Castelló, shall take his place and be a contracting party, if he so desires. Otherwise, the plantation, whatever its condition may be at the time of his death, shall immediately pass into the possession of its owner Don Joaquin Sanchez de Larragoiti.

11th. Don Joaquin Sanchez de Larragoiti shall authorize his present manager and attorney in fact in Mayaguez, Porto Rico, Don Joaquin Torriabelló, for the purpose of giving possession of the property "Altagracia" and of the lands thereof to Don Salvador Castelló.

12th. It is the will of the contracting parties that this private contract shall have the same force as if it were a public instrument, to which it may be reduced by any one of the said parties, and the expenses thereof shall be for account who so reduces it.

This contract was read and approved by the contracting parties who sign the same in duplicate, in Paris, on the eighteenth day of January, nineteen hundred and five (1905).

It is further agreed as an additional condition that Don Joaquin Sanchez de Larragoiti agrees with Don Salvador Castelló on the term of one (1) year from and after this day to begin work on the Central "Altagracia." Upon the expiration of this term, if the necessary improvements shall not have been begun by him, then this contract shall be null and void, and no cause of action shall accrue to any of the contracting parties by reason thereof. S. Castelló. J. Sanchez.

The document hereinabove inserted is a true copy of the original thereof, to which I refer and certify.

"Second: That under date of the sixth (6th) ultimo they extended the contract hereinbefore inserted, by the condition which being literally copied reads as follows:

"Having celebrated a contract with Don Salvador Castelló, in this City, on the eighteenth (18th) day of January of the current year for the exploitation, for a term of ten (10) years, of my property named "Altagracia," I make known by this document,

71 which I desire to have the same force as if it were public, that the said term of ten (10) years is hereby extended to twenty (20) years, it being well understood that this extension does not modify or alter the other clauses of the contract. Paris, June sixth (6th), nineteen hundred and five (1905).

"It is a true copy from the original thereof, to which I refer and certify."

"Third: The private document hereinbefore inserted has been reduced to a public instrument in accordance with the provisions thereof, under the instrument executed before me under date of yesterday, by Don Salvador Castelló, the original of which I have before me for this act."

"Fourth: In virtue whereof, the contracting parties have agreed among themselves on the assignment of all rights and actions in and to the Central 'Altagracia,' and therefore, Messrs. Salvador Castelló and Gerardo Castelló by these presents do assign, waive and transfer to Don Frederick L. Cornwell for the corporation to be organized under the name of "Central Altagracia," of which he is the trustee, the rights which they have of exploiting the said Central 'Altagracia' under the conditions established in the contract hereinbefore inserted, and, further, under the following conditions:

"First: The corporation to be organized under the name of 'Central Altagracia' will donate to Don Salvador Castelló eight thousand dollars (\$8,000.00) in paid-up shares of the stock to be issued by it, for and in consideration of which the Company shall have the right to install and operate steam machinery with a grinding capacity of two hundred (200) tons of sugar cane per day of twenty-four (24) hours.

"Second: When the company shall have increased the number of tons to be ground during twenty-four (24) hours to three hundred (300) tons, then Señor Castelló will receive four thousand dollars (\$4,000.00) more in paid-up shares; and in the same manner the same Señor Castelló will continue to receive Two Thousand Dollars (\$2,000.00) in paid-up shares as the Company goes on increasing the number of quintals of cane, it being understood that the said amount of Two Thousand Dollars (\$2,000.00) is for each increase of one hundred (100) tons.

"Third: In consideration of this contract the Company binds itself to use the services of Don Salvador Castelló, and in case of his incapacity or personal disability or in his absence, then the Company shall make use of the services of the other assignor Don Gerardo Castelló, as Superintendent and at an annual salary of Fifteen Hundred Dollars (\$1500.00), beginning from and after

the first (1st) day of October next.

72 "Fourth. The said Señor Castelló from the moment that he takes charge of the aforesaid services as superintendent, shall render the same uninterruptedly and shall devote all his time to the services of the assignee Company and shall only be responsible to the Board of Directors of the corporation.

"Fifth: In case of absence of Don Salvador Castelló his brother, Don Gerardo, shall continue to perform the same services; and in case that he should have to relinquish his position for good and sufficient reasons, the Company binds itself to pay him his salary during the life of this contract, as if he were an employee of the corporation; and in case of the death of the said Don Salvador,

his brother, Don Gerardo, will substitute him, pursuant to the provisions of the private contract hereinbefore inserted.

Fifth: This assignment of rights is made by Don Salvador Castelló under the same conditions as are stipulated in the aforesaid contract above inserted, and the said Don Gerardo assigns such rights as he may have as the substitute of his brother Don Salvador, under the aforesaid contract, and shall be subject in the same way to the contract entered into with Don Joaquin Sanchez de Larra-gotí, as well as to the present contract.

Sixth: Don Frederick L. Cornwell, in representation of the Company to be organized under the name of "Central Altamaria," accepts this contract in all its parts, as it is in accordance with the agreement, binding himself together with the other parties hereto, to a faithful compliance with the conditions stipulated in this document.

In testimony whereof, they so state, covenant and sign with the witnesses Don José Ramirez and Don Robustino Biaggi, residents of this city, after I read to them this instrument, at the same time informing them of their respective right to do so, each one for himself, to all of which I certify.—C. Castello, F. L. Cornwell, Jose Ramirez, Robustino Biaggi. Signed Ledo, Mariano Riera Palmer.

3. That by public instrument executed in the City of San Juan, Porto Rico, on the eleventh (11th) day of April, nineteen hundred and seven (1907), before Francisco de la Torre y Garrido, Lawyer and Notary, the Central Altamaria Company executed in favor of Don Ramon Valdes y Cobian the contract of conditional sale contained in said instrument, which is as follows:

"Number Eighty.

"In the City of San Juan, Porto Rico, on the eleventh (11th) day of April, nineteen hundred and seven (1907), before me, Francisco de la Torre Garrido, Lawyer and Notary of this Island, with residence and vicinity at the Capital thereof,

Appear:

73 Mr. Noah B. K. Pettingill, party of the first part, who states that he is forty-four (44) years of age, married, lawyer and a resident of this city, and

Don Ramon Valdes y Cobian, party of the second part, who says that he is fifty-two (52) years of age, married to Doña Encarnación Cobian, property owner, and also of this vicinity.

The said Señor Valdés Cobian appears herein in his own right, and the said Mr. Pettingill in the name and on behalf of the corporation domiciled in the District of Mayaguez and named "Central Altamaria," of which he is the Secretary and Treasurer, having been authorized to execute these presents by the Board of Directors of the same, as shown by the resolutions adopted by said Board, which are attached hereto and made an integral part hereof. Therefore, they have, in my opinion, the legal capacity necessary to execute this instrument of conditional sale.

They state the following facts:

1st. That the Central Altagracia, in the sugar factory established in the District of Mayaguez, near Añasco, has installed and is the owner of the apparatus and machinery hereinafter specified, to wit: a grinding mill, number twenty-three (23), of six (6) rollers, four (4) feet in length each, manufactured by Fulton Ironworks; two (2) crushers, two (2) defecating pans, each of a capacity of one thousand (1,000) gallons, and four (4) defecating pans each of a capacity of five hundred (500) gallons; a ten (10) foot vacuum pan, and another one of seven (7) foot, one of them manufactured by Payne & Jourvert, and the other one manufactured in Scotland; a quadruple effect —, manufactured by the Lyllia Manufacturing Company, of a capacity of seventy-five thousand (75,000) gallons; four (4) crystalizers manufactured by Payne & Jourvert, nine (9) centrifugals, four (4) of them manufactured in Scotland and five (5) American; five (5) boilers for generating steam, one (1) of three hundred (300) horse power, two of two hundred (200) horse power each, one of one hundred (100) horse power, and another one of eighty (80) horse power; thirty (30) iron tanks; one steam engine, number two hundred and ninety-five (295), manufactured by Corliss; several pumps and small machines and other apparatus and utensils appertaining to said factory.

2nd. That the said Central is installed in land belonging to Don Joaquin Sanchez Larragoiti, who ceded the same together with the land for a term of twenty (20) years to Don Salvador Castelló, under contract in which among other things, it was agreed as follows, to wit:

7th. As already stated in Article 3rd, Don Salvador Castelló may add any new machinery or apparatus to those now existing in the said Central Altagracia. In case of expenses of this nature for new machinery or repairs, the whole shall be for account of the operators, and neither Don Salvador Castelló nor any other person shall have the right to demand any return or payment for any part of the expenses that may originate from such repairs, nor shall such new machinery as Don Salvador Castelló may consider advisable to add to the machinery now existing be deemed to be expenses, and, therefore, no direct claim or deduction shall be made from such profits as may accrue to Don Joaquin Sanchez de

74 Larragoiti out of the exploitation of the said property.

8th. Upon the expiration of the term agreed on under this contract, any improvement or machinery installed in the said Central shall remain for the benefit of Don Joaquin Sanchez de Larragoiti; and Don Salvador Castelló shall have no right to claim anything for the improvements made.

9th. After each crop such profits as may be produced by the Central Altagracia shall be distributed, and twenty-five per cent (25%) thereof shall be immediately paid to Don Joaquin Sanchez de Larragoiti, as equivalent for the rental of the said Central and of the twenty-two (22) cuerdas of land surrounding the same. The remaining seventy-five per cent (75%) shall belong to Don Sak

vador Castello, who may interest therein whomsoever he may wish, either for the whole or part thereof.

3rd. That by instrument executed in Mayaguez, before Don Mariano Riera Palmer, Lawyer and Notary, with residence and vicinity in the said city, the said Salvador Castelló subrogated in his place, in so far as the contract set forth in the preceding paragraph refers to, the corporation represented by Mr. Pettingill.

4th. That the said corporation being in need of a certain amount of money, it agreed to make a conditional sale of the machinery and apparatus specified in paragraph first (1st) hereof to the other party hereto, the said Valdes y Cobian, and carrying the said agreement into effect under the following clauses, they covenant.

First. Mr. Noah B. Pettingill, in the capacity in which he acts, transfers, on conditional sale, that will mature on the first (1st) day of April of the ensuing year, nineteen hundred and eight (1908), to Don Ramon Valdes y Cobian, who accepts the transfer, all the apparatus and machinery specified in paragraph first (1st) hereof, with all other appurtenances and utensils annexed to the factory and that belonged to the corporation Central Altamaria, there being included in said sale all such other apparatus and machinery as may be mounted by the said corporation while the conditional term shall last and which shall be a part of the said factory for the manufacture of sugar.

Second. The aforesaid sale is made for the amount of Thirty-Five Thousand Dollars (\$35,000.00), of which the representative of the vendor corporation acknowledges to have received Twenty-Five Thousand Four Hundred Dollars (\$25,400.00) prior to this act and to this entire satisfaction, and the balance of Nine Thousand six hundred Dollars (\$9,600) shall be turned over to the vendor corporation by Señor Valdes, immediately upon being requested to do so by the former.

Third. The aforesaid sale shall be consummated in favor of the purchaser Señor Valdes upon the expiration of the first (1st) day of April, nineteen hundred and eight (1908).

75 Fourth. The machinery and apparatus transferred under this instrument to Señor Valdes y Cobian are leased by the latter to the corporation Central Altamaria for the price or rental of Three Thousand Six Hundred Dollars (\$3,600.00) per annum, payable at maturity.

Fifth. Should this sale be consummated, the vendor corporation subrogates the vendee, Señor Valdes in its place and stead in everything concerning the contract with Don Joaquin Sanchez de Larragoiti, in paragraph 2nd of the statement of facts hereinabove referred to, assigning all its rights and actions, under the said contract, to the said Señor Valdes, who shall, in turn, be bound to comply with the obligations of the assigning corporation.

Such is the instrument which the contracting parties execute and covenant and by which they bind themselves to stand and abide at all times, under the liabilities of law, and designate this city for all acts and proceedings arising thereunder.

Don Julian de Bengoechea and Don Jesus Noriega are witnesses,

without legal disqualifications, known to me, to act as such, and residents of this city.

This instrument was read by the contracting parties and witnesses and was approved by the former and signed by all.

And as to the identity of the contracting parties, their age, whether married or single, profession and residence, and to everything else herein contained, I, the Notary, certify. (Signed) N. B. K. Pettingill.—R. Valdes.—J. de Bengoechea.—F. de la Torre. There are the proper internal revenue stamps cancelled by the seal of the Notary."

(4) That the Central Altagracia Company received from Don Ramon Valdés y Cobian the said amount of Thirty-Five Thousand Dollars (\$35,000.00) referred to in clause second of the preceding instrument, copied under No. 3, which said amount was invested by it in the purchase of machinery which it has already installed on its property in Porto Rico and in improvements to the same; which gives to this credit the character of "refaccionario."

(5) That, because of its being convenient to their interests, both parties have entered into the contract contained in the following clauses:

First. The President of the Central Altagracia Incorporated, in the name and in representation of the same, sells, assigns and transfers to Ramon Valdes y Cobian, and this latter accepts, the contract of lease and all other rights, which the Company acquired from Salvador and Gerardo Castelló Camps, under instrument copied under No. 2, which said rights are such as were acquired by the latter named parties from Don Joaquin Sanchez de Larragoiti under the contracts set out in the instrument hereinbefore inserted under No. 1; and he further sells, assigns and transfers to the said Valdes y Cobian each and every right appertaining to the Company in and to the machinery, utensils and appurtenances that existed on

76 the properties of the Central Altagracia at the time that the contract of lease was assigned to the Company, as well as such rights as the Company has in and to the machinery, utensils and appurtenances installed by it thereafter on the said properties.

Second. The consideration for the sale, assignment and transfer of the said contract and rights is the amount of Sixty-Five Thousand Dollars (\$65,000.00), American gold, which the Company has received already from Valdés y Cobian in this way. Thirty-Five Thousand Dollars (\$35,000.00) which the Company was owing him under the public instrument dated April the eleventh, nineteen hundred and seven (1907), executed before the Notary, Francisco de la Torre y Garrido, hereinbefore inserted under No. 3, and the balance of Thirty Thousand Dollars (\$30,000.00) which the Company has received afterwards in cash from Valdés y Cobian.

Third. Inasmuch as the sale, assignment and transfer of the contract or lease, machinery, utensils and appurtenances which the Company makes this day to Valdes y Cobian, dispose of the contract copied under No. 3 and set forth in the instrument dated April eleventh (11th), nineteen hundred and seven (1907), executed in the City of San Juan, Porto Rico, before Francisco de la Torre

Garrido, Notary Public, both parties declare the said contract and instrument cancelled and substituted by the contract contained in this instrument.

Fourth. All expenses for this and any other instruments in connection with this contract and executed by the two parties hereto shall be for account of the Company.

Fifth. Both parties accept the rights and undertake the obligations arising under this contract.

I certify that I have informed the contracting parties that this instrument should be filed in the proper Registry of Property in Porto Rico, to be recorded therein and be effective as against third parties.

In the presence of the witnesses I read the aforesaid to the contracting parties, to whom I explained the legal force and effect of this instrument, and fully aware of the contents hereof they ratified the same without modifying it, and accepted the same and sign with the witnesses, to all of which I certify.

(Signed)

FREDERIC C. CORNWELL.

President Central Altamira, Inc.

(Signed)

RAMON VALDÉS.

Witnesses:

EDWIN S. LEWIS. (Signed.)

HUGO KOHLMAN.

Before me,

(Signed)

A. P. BARRANCO.

Notary Public.

I, Peter J. Dooling, Clerk of the County of New York, do hereby certify that A. P. Barranco is a Notary Public.

(There is a seal.)

77 Filed at 10 A. M. this day, as per entry No. 939, Folio 229, Volume 1st of the Day Book.

(Signed) The Registrar, JOSÉ E. BENEDICTO.

Mayaguez, January 3, 1908.

(There is a seal of the Registry).

The registration of the preceding document is not admitted because of the defect of not describing the property therein referred to, and because the right of lease thereby assigned does not appear recorded in favor of the assignor, according to the indexes, and for the same reasons a cautionary entry for 120 days cannot be made, either.

Mayaguez, February 19, 1908.

(There are two internal revenue stamps of fifty cents each, cancelled.)

(Signed)

The Registrar, JOSÉ E. BENEDICTO.

(Cancelled two internal revenue stamps of fifty cents each as per
No. 1 of the Tariff and Internal Revenue Law.)

(Signed)

BENEDICTO.

(There is a seal of the Registry.)

The party filing notified this 17th day of March, 1908.

(Signed) J. VAZQUEZ. (Signed) BENEDICTO.

A true and correct translation:

*— — — — —
Interpreter & Translator.*

EXHIBIT B.

In the City, County and State of New York, United States of America, on the second (2nd) day of November, nineteen hundred and seven (1907), before me, Joseph A. Caras, Notary Public in and for the Counties of Kings and New York, and before the witnesses Augustin P. Barranco and Frederick K. Sewall, residents and qualified by law,

Appeared the following named persons who are also known to me and who understand the Spanish language:

(1) Don Ramon Valdes y Cobian, acting in his own behalf, of lawful age, married, capitalist, resident of this city;

(2) Frederick L. Cornwell, of lawful age, bachelor, attorney at law, resident of Mayaguez, Porto Rico, President of and representing the Central Altgracia, Incorporated, which is a corporation duly organized and existing under the laws of the State of Maine, United States of America, as set forth in the certificate of incorporation which I have had before me and was filed in the respective Department of State on the twenty-third (23rd) day of August, nineteen hundred and five (1905). He was elected to the office which he is discharging at a meeting of the Board of Directors of the Company, held on the twenty-eighth (28th) day of December, nineteen hundred and six (1906) as set forth in the respective minutes of the proceedings which I have had before me. The authority under which he acts appears from the resolution adopted at a general meeting of the stockholders of the Company, held on the thirtieth (30th) day of October, nineteen hundred and seven (1907), the record of the proceedings of which said meeting I certify to have seen. The said resolution, the translation of which into Spanish I certify to be correct, reads literally as follows:

"Whereas the Board of Directors of this Company, at a meeting held on the twenty-eighth (28th) day of October, nineteen hundred and seven (1907), adopted the following resolutions:

"Whereas it is convenient to the interests of this Company to acquire the rights and properties belonging to Ramon Valdes y Cobian in and to the Central Altgracia, situated near the City of Mayaguez, in the municipality of the same name, in the Island of Porto Rico;

79 "Therefore, be it resolved that this Company purchase from Ramón Valdes y Cobian for the amount of sixty-five thousand dollars (\$65,000.00), American gold, the contract of lease and all other rights unto him belonging in and to the Central Altamaria. The said amount shall be paid in installments with interest thereon at the rate of ten per cent (10%) per annum, and the transfer of title thereto shall not be made until the full amount of Sixty-Five Thousand Dollars (\$65,000.00) and interest thereon shall have been paid.

"And Be It Further Resolved that the President of this Company be, and he is hereby authorized, empowered and directed to execute and sign, in the name and on behalf of the Company, all such public documents as may be necessary or desirable for the purpose of carrying the preceding resolution into effect.

"Therefore Be It Resolved to ratify and approve the preceding resolutions and the purchase which the Company has made from Ramón Valdes y Cobian of the contract of lease and of all other rights therein described and to consider the said resolutions as the acts and resolutions of the stockholders of this Company."

Don Ramón Valdes y Cobian, hereinafter called Valdes y Cobian, and the President of the Central Altamaria Incorporated, herein-after called the Company, have entered into the contract contained in the following clauses.

First: Ramón Valdes y Cobian conditionally sells, assigns and transfers to the Central Altamaria Incorporated, and the latter accepts the contract of lease and all other rights which he has in and to the Central Altamaria, situated near the city of Mayaguez, in the Municipality of the same name, Island of Porto Rico, and which he acquired from the said Company under instrument executed in this City yesterday, before the undersigned Notary Public. The said contract of lease and all other rights are the same as the Company acquired from Salvador and Gerardo Castelló Camps, and by these latter from Joaquin Sanchez de Larragoiti; and, further, such other rights as belonged to the Company, for any reason, in and to the machinery, utensils and appurtenances existing on the properties of the Central Altamaria, and which were sold by the said Company to Valdes y Cobian under the instrument aforesaid.

Second: The consideration for the conditional sale, assignment and transfer of the said contract and rights is the amount of Sixty-Five Thousand Dollars (\$65,000.00), American gold, which

80 the Company shall pay punctually to Valdes y Cobian, in San Juan, Porto Rico, or in this City, with interest thereon at the rate of ten per cent. (10%) per annum, which is the current rate in Porto Rico, to be computed every six (6) months, on installments as follows: One-fourth part on the first (1st) day of April, nineteen hundred and eight (1908); one-fourth part, on the first (1st) day of April, nineteen hundred and nine (1909); one-fourth part, on the first (1st) day of April, nineteen hundred and ten (1910), and the remaining balance on the first (1st) day of April, nineteen hundred and eleven (1911).

If, for any reason, the Company shall be unable to pay any in-

stalment on the dates fixed, Valdes y Cobian, binds himself to extend the same for a term of one (1) year, provided the interest on the total amount shall have been paid. Such deferred installment, together with the next maturing on the same day, shall be paid at the same time; and, failing to do so, the whole amount shall, on that fact alone, become due and shall be immediately paid.

The Company shall pay interest, including such as may accrue on any deferred installment, to Valdes y Cobian, with strict punctuality, every six (6) months at either one of the two places hereinabove stated:

Third: Should the Company fail to pay interest to Valdes y Cobian with strict punctuality, or at most within thirty (30) days from and after the maturity of each semi-annual payment; or should it fail to pay any one of the four parts of the price in the manner hereinabove stated, or should it fail to comply with any of the obligations assumed by it under this contract, then, by that mere fact, all other installments shall be held to have become due, and Valdes y Cobian may enter immediately into possession of the properties and rights conditionally sold under this instrument.

The Company reserves to itself the right to make advance payments, at any time, to Valdes y Cobian, on account of the 81 money due him by reason of the price of this contract, and in such event the Company shall only pay such interest as shall have accrued on the amounts paid, upon to the date of the respective payments.

Fourth: It is expressly stipulated and agreed that the "dominio" and ownership of the contract of lease and of all other rights which are the object of this contract, will belong exclusively to Valdes y Cobian while the Company shall not have paid in full the price of the said contract of lease and of all other rights hereinabove mentioned, including the rights to the machinery, utensils and appurtenances of the Central Altgracia. Wherefore the said Valdes y Cobian, on the mere fact of not having been paid on the terms agreed to, either the interest or any of the four (4) installments of the price, may take immediate possession of the contract of lease, rights, machinery, utensils and appurtenances of the Central Altgracia, as the owner thereof, and for which he is especially authorized by the Company from this moment.

Fifth: The Company undertakes the following additional obligations:

a. It will pay for its own account all impost- and taxes, whether ordinary or special, and whether of a fiscal, municipal or of any other nature, affecting or connected with the properties and rights that are the object of this contract.

b. While the amount and interest referred to in this contract shall not have been paid in full, it shall keep covered by fire insurance and against all other risks insurable in Porto Rico, all the properties and rights that are the object of this agreement; binding itself to keep the said insurance policies in force, and to do nothing, or permit anything to be done that shall affect the said properties and rights to the prejudice of the said Valdes y Cobian, or that may

invalidate or diminish the value of the said insurance policies.

82 In case of losses covered by said policies, or by any of them, Valdés y Cobián has the right to receive directly and immediately all the proceeds of policy or policies, which he shall invest in making repairs of the damages caused, in the purchase of machinery, utensils and appurtenances to replace such as may have been destroyed, and reinsuring the properties and rights hereinabove mentioned.

e. It shall be subject in everything to the laws of Porto Rico and of the State of Maine, United States of America; and shall, furthermore, comply with and cause to be complied with all rules and regulations in force in matters of sanitation, fire, roads or of any other nature that may affect the properties and rights herein referred to; and it undertakes forthwith all liabilities resulting from violations of or for non-compliance with said laws, rules and regulations; the Company thus guaranteeing that Valdes y Cobian will be fully exempted from such liabilities.

d. It shall not place, or allow to be placed, to the prejudice of Valdes y Cobian any lien, encumbrance or easement of any kind, on the properties and rights conditionally sold.

e. It shall manage the properties and business of the Central Altamira in the regular manner for this kind of enterprises, and shall keep in a perfect condition of repair and maintenance the buildings, dependencies, machinery, utensils and appurtenances of all kinds, making, at its own expense, on petition of Valdes y Cobian or without it, all the necessary repairs and such substitutions of machinery, utensils and appurtenances as may be indispensable to make, in accordance with the practice of the best engineers.

Sixth: Should the Company fail to undergo the expenses which it is bound to undergo under this contract, of whatsoever nature the same may be, including payment for taxes, imposts and liens,

83 Valdes y Cobian may do so, in which case, any sums so expended by him, and interest thereon at the rate of ten per cent (10%) per annum, shall be paid to him by the Company, together with the amount that should be paid by the latter for the next installment of the price.

Seventh: Valdés y Cobian is hereby fully authorized by the Company to examine, whether personally or through his agents and representatives, at any time and as often as he may deem it advisable, all the properties, books and papers of the Company to convince himself as to whether or not the said properties, machinery, utensils and appurtenances are kept in complete condition of repairs, and whether or not they are being duly managed and operated; and also to convince himself as to whether or not each and every obligation that the Company has assumed under this contract are being complied with.

Eighth: All the expenses occasioned under this or any other instrument that may be executed by the two parties hereto in connection with this contract shall be for account of the Company.

Ninth: Both parties accept the rights and undertake the obligations arising under this contract.

I certify that I have informed the parties that they should file this instrument in the proper Registry of Property in Porto Rico to be recorded therein, to the end that it may produce its effects against third parties.

In the presence of the witnesses I read the foregoing to the contracting parties, to whom I explained the force and legal effect of this instrument, and fully cognizant of the contents hereof, they ratified the same without modification, accepted it and sign with the witnesses, to all of which I certify.

(Signed)

R. VALDES,

F. L. CORNWELL,

President Central Altgracia, Inc.

Witnesses:

A. P. BARRANCO,

FREDERICK K. STEWARD.

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Before me.

(Signed)

JOSEPH A. CARAS,

Notary Public.

There is a certificate issued by Peter J. Dooling showing that Joseph A. Caras is a notary public.

A true and correct translation.

Interpreter and Translator.

(Filed July 26th, 1909.)

In Equity. No. 565.

THE CENTRAL "ALTAGRACIA," INCORPORATED, Complainants,
vs.

RAMON VALDES and NEVERS & CALLAGHAN, Defendants.

In Equity. No. 564.

RAMON VALDES, Complainant,

vs.

THE CENTRAL ALTAGRACIA, INCORPORATED, Defendant.

Motion of Nevers & Callaghan to be Made Parties Defendant in the Suit of Ramon Valdez vs. Central Altgracia, Incorporated, Equity No. 564, and to be Permitted to File Their Answer to such Complaint or Cross-hill as May be Presented by the said Valdez.

To the Honorable Judge of the District Court of the United States for Porto Rico:

Never & Callaghan, a co-partnership composed of George W. Never and James G. Callaghan, citizens of the United States and

residing in the City of New York, represent that, as shown by the records of this court, they have acquired a judgment against
 85 the Central Altamaria, Incorporated, for the sum of Fifteen Thousand Eight Hundred Seventy-eight and 87/100 (\$15,878.87) Dollars; that an execution was issued upon the said judgment and was levied upon all the machinery within the factory building of the said Central Altamaria; that by reason of such circumstances they have acquired a vested right of interest in such property. They aver, however, that in the Bill of Complaint which the said Ramon Valdes has filed in the above entitled cause of Ramon Valdes vs. Central Altamaria, Incorporated, and in an Answer and Cross-Bill which he has filed in the above entitled cause of Central Altamaria, Incorporated, versus Ramon Valdez and Nevers & Callaghan, he is making a claim to be the owner of the machinery of the said Central Altamaria, incorporated, upon which the levy of the said execution in favor of your petitioners has been made.

Your petitioners therefore pray that they may appear as defendants to the said complaint or cross-bill of the said Ramon Valdes and that they may file the accompanying answer and cross-bill in opposition to the claims of the said Valdes.

San Juan, July 26, 1909.

F. H. DEXTER,
Attorney for Nevers & Callaghan.

(Filed July 26th, 1909.)

CENTRAL ALTAGRACIA, Incorporated,
 vs.
 RAMON VALDES and NEVERS & CALLAGHAN.

Answer and Cross-bill of Defendants Nevers & Callaghan.

These Defendants, now and at all times hereafter saving to themselves all and all manner of benefit of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the Bill of Complaint herein filed,—
 86 for answer thereto, or to so much thereof as these Defendants are advised it is material or necessary for them to make answer to, answering say:

That on the 16th day of May, 1908, these Defendants obtained in this Court a judgment in their favor, and against the Complainant herein, the Central Altamaria, Incorporated, for the sum of \$15,878.87, together with interest and costs.

That on the 27th day of May, 1908, execution was issued upon the said judgment out of this Court, and that on the 29th day of May, 1908, the same was levied by the Marshal of this Court upon "all the machinery within the factory building of the said Central Altamaria, Incorporated, near Mayaguez, Porto Rico, by posting a like copy of the said execution, together with a copy of the notice

of the said levy, at the entrance of the said factory building, leaving the said machinery in the custody of J. Sifre, Manager."

No writ of Error has been prosecuted by the said Central Altagracia, Incorporated, from the said judgment, and the same is now in full force and effect.

That thereafter, and on the 3rd day of June, 1908, this Court made an order directing the Marshal of this Court to refrain from selling any of the property levied upon under the said execution until the further order of this Court, but in and by the said order it was expressly provided that the same should in no manner affect the lien or rights, if any, acquired in the property levied upon by reason thereof.

These defendants say that no part of the said judgment, interest or costs, has been paid.

Defendants further allege that by the said judgment and levy of the said execution they acquired a valid and vested right in and to the property of the Central Altagracia, Incorporated, so levied upon; and Defendants further state that there is no other claim, charge or lien, upon the said property which has preference to the said claim and levy of these Defendants, with the exception

87 of the claim and interest of the Sucesion of Don Joaquin Sanchez de Larragoiti in and to the said property comprising the plant and mill of the Central Altagracia, Incorporated.

These Defendants insist that this Court has no power to delay them in the enforcement and collection of their debt solely because of the appointment of a Receiver to take charge of the said Property; and they further allege that the rights which they have secured by reason of the levy of the said execution are being imperiled by delay, and that the machinery levied upon is rapidly deteriorating in value.

Defendants, therefore, respectfully pray that the Order of this Court made on the 3rd day of June, 1908, restraining the execution aforesaid, be rescinded, and that they be permitted to enforce their said execution by a sale of so much of the property levied upon as may be sufficient to realize the amount of their said judgment, together with the interest and costs.

FRANCIS H. BAXTER,
Attorney for Nevers & Callaghan.

Journal Entries, July 27, 1909.

Altagracia Cases.

The filing of the following papers is now entered of record to wit:

Filed by F. H. Dexter, of counsel for Nevers & Callaghan, on the 26th instant in #561 and 565 consolidated, Motion of Nevers & Callaghan, to be made parties defendant in the suit of Ramon Valdes vs. Central Altagracia, Incorporated, Equity No. 564, San Juan, and to be permitted to file their answer to such Complaint or Cross-Bill as may be presented by the said Valdes.

There was also filed on July 25th, 1909, the answer and Cross-Bill of defendants Nevers & Callaghan to the complaint in 565, San Juan, "Central Altagracia, Inc., vs. Ramon Valdes and Nevers & Callaghan."

88 And on this Twenty-seventh day of July, 1909, F. H. Dexter calls up his motion on behalf of his clients Nevers & Callaghan for leave to be made party defendant in suit of Ramon Valdes vs. Central Altagracia, Incorporated, and to be permitted to file their answer therein, and Martin Travieso, counsel for Ramón Valdés being present, the said Dexter argues his motion and no one opposing same, the Court being fully advised grants it.

Whereupon the said Dexter files Answer and Cross-Bill of Nevers & Callaghan to Cross-Bill of Ramón Valdés in #564 and 565, San Juan, Consolidated.

Also files the said Dexter, a paper backed "Intervention and Protest of Succession Sanchez Larragoiti to Sale of Machinery belonging to it."

Now comes Benjamin J. Horton and enters his appearance as associate counsel for Nevers & Callaghan, defendants in the two Altagracia suits consolidated #564 and 565, San Juan.

#564 and 565, San Juan, Consolidated.

RAMON VALDES
vs.
CENTRAL ALTAGRACIA, INC.,

and

CENTRAL ALTAGRACIA
vs.
RAMÓN VALDÉS et al.

Now comes Ramon Valdes by his Solicitors of record Martin Travieso and José de Diego, and files Answer and Cross-bill herein.

#565, San Juan. Equity.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES et al.

89 Now comes N. B. K. Pettingill, of counsel for complainant, Central Altagracia, Incorporated, and files Affidavit herein.

#564 and 565, San Juan, Consolidated. In Equity.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, INC.,

and

CENTRAL ALTAGRACIA, INC.,
vs.
RAMÓN VALDÉS et al.

Comes now N. B. K. Pettingill, of counsel for the respondent in suit #564 and for Complainant in suit #565, and files an affidavit in the above consolidated causes setting forth the necessity for taking the deposition of one Geo. C. Lilley, E. C. Denning, and some seven others in the cities of Philadelphia and New York, and setting forth in substance what he expects to prove by said witnesses and asserting that complainant in suit #565 cannot safely go to trial without the evidence of such witnesses before the Court, and he therefore requests that the matter be postponed to give complainant in suit #565 an opportunity to take the depositions of said witnesses. And the Court hears him in that behalf, at length, and hears counsel for all the opposing parties, Messrs. Martin Travieso and José de Diego for the respondent, and F. H. Dexter and B. J. Horton for Nevers & Callaghan, and being fully advised, states to said counsel for complainant in suit #565, that the matter has been pending for more than a year and that Counsel had full notice of the Court's intention to press the matter to issue and trial, and that it is not disposed to delay matters at this time when the admissions of the pleadings are so broad that the proofs available here in Porto Rico are probably sufficient, and the amended complaint already on file in suit #565 and the answer thereto and the answer filed in suit #564, as well as the Cross-bill also recently filed in suit #565, make so many allegations and admissions, as that the real issue between the parties can be plainly seen and that in the opinion of the Court enough proof is available here in Porto Rico, and Complainant in suit #565, if it sees fit, may file exceptions to the answer and an answer to the Cross-bill, but that in the opinion of the Court, the same would be mere formalities, as the opposite pleadings of each of the parties in said causes reduces the issues almost entirely to questions of law, and hence the Court requires that the causes proceed and gives the said Complainant in suit #565 until to-morrow morning within which to file his exceptions to the Answer and his Answer to the Cross-bill in said suit, if he shall choose so to do, and informs him that he may consider the same as filed and file the same in writing at any time before the end of the trial, if he so desires, and that if it shall appear after Complainant makes its case or even at any time before the close of the case, that counsel's statement is well founded, that the absence of the

witnesses named does in fact prejudice his client, the Court will hear his application to have such depositions taken.

Journal Entry, July 28, 1909.

No. 564 and 565, San Juan, Cons.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC.,

and

CENTRAL ALTAGRACIA, INC.,

vs.

RAMON VALDES et al.

Now comes F. H. Dexter of counsel for Nevers & Callaghan, defendants in both of the above entitled suits, and with leave of the Court first had amends the answer and Cross-bill by them 91 filed to the Cross-bill of Ramón Valdés in these same two consolidated suits, by adding on the second page thereof and at the end of paragraph II, after the word "litigation," the following words, to wit: "That on the 27th day of May, 1908, execution was issued upon the said judgment out of this Court, and that on the 29th day of May, 1908, the same was levied by the Marshal of this Court upon "all the machinery within the factory building of the said Central Altagracia, Incorporated, near Mayaguez, Porto Rico; by posting a like copy of the said execution, together with a copy of the Notice of the said levy, at the entrance of the said factory building, leaving the said machinery in the custody of J. Sifre, Manager."

Now comes Ramon Valdés, by his Solicitors of record and file the following papers, to wit:

Answer of Ramón Valdés to Cross-bill of Nevers & Callaghan;

Replication of Ramón Valdés to the answer of Messrs. Nevers and Callaghan, and

Replication of Ramón Valdés to the Answer of Central Altagracia, Incorporated.

The above consolidated causes come on for hearing before the Court without the intervention of an Examiner or Master and the Complainant, Central Altagracia, Incorporated, by its counsel N. B. K. Pettingill and F. L. Cornwell, although present in open Court, refusing to file any exceptions to the Answer or any Answer to the Cross-bill in suit #565 aforesaid, and protesting that they do not desire to proceed with the taking of testimony before said issues are made up and that they desire their full time which they allege they are entitled to under the rules within which to file the same,

and the Court having heard Counsel for all parties in that 92 regard, and considering that the issues are sufficiently made up as the pleadings now stand, to enable the Court to do so,

announces that it will proceed, even though Counsel refuse to file such additional pleadings, and the court in that behalf makes a Statement which the Stenographer writes out and it is put in the files, wherein all counsel concerned can see it.

And thereupon the Court proceeds with the trial and the Complainant the Central Altagracia, Incorporated, by its said counsel refusing to proceed, the Court hears evidence for the respondents Nevers & Callaghan, and also evidence for the respondent Ramon Valdés, and the cause not being finished at the adjournment hour, the hearing is continued over until to-morrow morning at Ten o'clock, it being announced several times during the day by the Court that Complainant Central Altagracia has the right if it chooses to now cross-examine these witnesses or to at any time before the case is closed, *to* come in and make proof of the allegations of its bill in so far as the said allegations may not be admitted by the respondents while introducing their testimony, and may also make any proper proofs in the case they desire in or before the closing of the same, but that the Court will not further delay the taking of testimony as it feels that the issues are sufficiently before it, and the proofs necessary under the same are easily obtainable by all the parties here on the Island of Porto Rico.

(Filed July 27, 1909.)

Equity. No. 564 and No. 565.

RAMON VALDES
vs.
CENTRAL ALTAGRACIA, INC.,

Consolidated with

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES and NEVERS & CALLAGHAN.

Answer and Cross-bill.

93

Answer.

The Answer of Ramón Valdés, the Above-named Defendant, to the Bill of Complaint of Central Altagracia, Inc., Complainant.

The defendant Ramón Valdés, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:—

The defendant admits that in the month of March, 1907 the plaintiff herein negotiated a loan from the defendant for the sum of \$35,000, which the said plaintiff agreed to repay to the defendant on or before the first day of April, 1908, with interest at the rate of 10% per annum, but the defendant denies that the agreement by the Managing officers of the complainant corporation that defendant should be chosen a director and Vice-President of the Company at a salary of \$3,000 per year, was made as an additional consideration for the making of said loan from the defendant to the complainant, the fact being that such agreement was made after the negotiation of the said loan had been completed and in consideration for services rendered by defendant; and the defendant denies that he received any salary as director and Vice-President of the said Company.

The defendant admits that the Directors of the complaining corporation went to the City of New York for the purpose of negotiating an additional loan sufficient to repair and re-arrange the machinery of the Central and to pay off the debts of the said corporation; and that upon their arrival in New York the President and Treasurer of the complainant corporation submitted their plan to defendant who approved the same. The defendant states that he has no knowledge or information as to whether or not the said President and Treasurer of the said Company entered into negotiations with several parties. The defendant denies that by the terms of the preliminary agreement arrived at between the Officers of the complainant and the defendant herein, he, the defendant, was to advance to the complainant the funds necessary to purchase the needed machinery and that if the officers of complainant were able to return said advances with commissions and interest defendant was to accept the same, and in case of failure to return said advances, the same and all future advances were to be regarded as a refaccion debt and the proper documents drawn; and the defendant states the fact to be that by the terms of the said preliminary agreement it was provided that the defendant was to buy the necessary machinery for his own account, and was to turn it over to the Central Altamira when the price of it was paid back to the defendant with interest, together with a commission for the purchasing and shipping of the said machinery.

The defendant denies that the agreement between the defendant and the holders of a majority of the stock on behalf of the complainant, whereby the defendant was to be elected a member of the Board of Directors and President of the corporation for a term of four years at a salary of \$3,000 per year with the right to appoint a Manager at \$2,500 per annum, and whereby he was to receive a block of 150 shares of stock of the complainant, was made in consideration of the promise made by the defendant to make the said loan and finance the Company; and the defendant states the fact to be that he was elected President of the said corporation after the execution of the deed of conditional sale of November 2, 1907, for the reason that the election of the defendant as such President was considered to be beneficial to the interests of the said

corporation in as much as the colonos and other peoples did not want to enter into contracts with the members of the old Board of Directors; and the defendant further states the fact to be that the said block of 150 shares of stock of the said company was received by him as compensation for services rendered and not as the consideration for his promise to finance the corporation.

The defendant denies having ever claimed the right to name a majority of the Board of Directors of the complaining corporation; and he also denies having urged upon the remaining directors the recognition of such rights; and the defendant further denies having proceeded arbitrarily or in any other manner to usurp the powers of the said Board of Directors.

The defendant denies that he, as President of the complaining corporation ever proceeded to control and manage the business of the said corporation without reference to the wishes, judgment or authority of its Board of Directors, and defendant states that he always acted in compliance with the resolutions adopted by the Board of Directors of the said corporation, and that there was a long period of time during which there were no meetings of the said Board on account of the absence of its members, other than the defendant.

The defendant denies having ever expended any money for any purpose whatsoever, without the knowledge or authority of the complainant's Board of Directors; and he further denies having in any manner changed the plans for the reconstruction of the factory of the complainant.

96. The defendant admits that he installed in the factory of the complainant a Chief Engineer in charge of the running of the machinery, but the defendant denies that the said Engineer was so installed by him against the protest of the other members of the Board, and the defendant further denies that the said Engineer was incompetent for such position. And the defendant states the fact to be that the said engineer installed by him in the said factory was and is a very competent, able and skillful engineer, who is at present in charge of the Central Carmen, a very important sugar factory, and that the defendant had and was compelled to install the said engineer in order to fill the place of the former engineer, one Mr. Voss, who had been killed in accident which occurred in the complainant's factory, and Mr. F. L. Cornwell, the only other member of the Board present at that time opposed the appointment of the said engineer, without giving any reasons for his opposition and simply because he wanted to appoint his own brother to fill such a responsible and difficult position, for which he was clearly incompetent.

The defendant denies that he ever managed the business of the complainant company according to his individual will and caprice, and he further denies having ever objected to the presence of any other of the official of the company in or about its factory, whether they were or not accompanied by defendant.

The defendant admits that he acted as the Treasurer of the Complainant corporation, after his election as President of the company,

and that he collected and disbursed the funds of the said Company, but the defendant denies that the surrender by the Treasurer of the performance of his duties as such Treasurer to the defendant by way of substitution was made in order to avoid responsibility for the usurping acts of defendants, and the defendant denies having com-

mitted any usurping acts, as alleged in the bill of complaint,
97 and he also denies having ignored the Treasurer in respect to his duties as such. And the defendant states that the moneys collected by him were disbursed and used by him in paying for the machinery sold by him to the Central, paying for the reconstruction works of the Central, which was authorized by the Board of Directors, advancing money to colonos and in other payments necessary for carrying out the work of the Central. And the defendant states that his substitution as Treasurer of the Company was made for the reason that the Treasurer of the company requested such substitution for the purpose of absenting himself from the Island, as he immediately did, and that such substitution was made to last until the Treasurer should reassume the duties of his office, but that the said Treasurer has never tried since that time to reassume such duties, for which reason defendant had to continue acting as Treasurer.

The defendant denies the allegation that he did not pay over to the complainant any amount beyond the loan of \$35,000, the fact being that he afterwards paid to complainant the sum of \$30,000 as part of the purchase price of the machinery sold by complainant to defendant; and he denies having spent any amount of money in complainant's business without the knowledge, consent or authority of its Board of Directors and without passing through the Treasury; and defendant further denies that the amounts expended were in excess of the expenditures authorized or contemplated by the Board of Directors, or that they were far more than warranted by the financial condition of the company; and defendant further denies having expended any money without benefit or advantage to the complainant.

The defendant admits that after the making of the preliminary agreement between the Officers of complainant and defendant, he, the defendant, assumed the active and entire management 98 and control of the complainant's business; but the defendant states the further fact that he was compelled to so assume control of said business for the reason that the said Central had been abandoned by Messrs. Cornwell and Pettingill, Vice-President and Treasurer of the Company, respectively, who absented themselves and went to the United States leaving in charge of the office at Mayaguez the bookkeeper, Mr. Euripides Lugo, but without instructions and without funds to enable him to do anything beneficial to the interest of complainant and its creditors. That the defendant then assumed control of the abandoned Central for the purpose of keeping the same as a going concern thus protecting the interest of the Company and of its creditors, and that he assumed such management and control with the consent and authority of the Vice-President of the Company Mr. F. L. Cornwell.

The defendant denies that his agents, or any of them, spread throughout the Community of Mayaguez the report alleged in the bill of complaint to have been spread by the agents of the defendant, to the effect that the defendant had been obliged to take over the Central on account of the inexperience, extravagance and incompetence of the President and Treasurer formerly in control of the affairs of the said company, that said officers had been removed and had no further connection with the company, and that defendant had purchased the factory and machinery. And defendant states the fact to be that after he became President and assumed the management of the Central, when his agents tried to make contracts with the colonos, the said colonos refused to make any contract, alleging that they did not wish to enter into any agreement to which Mr. Cornwell was a party, and then defendant's agents informed the said colonos, such being the fact, that Mr. Cornwell was no longer the President of the Central and that defendant was the new President and Manager of the said Central and that that was the only manager in which defendant's agents were able to secure contracts with the colonos, who absolutely refused to negotiate or have any dealings with the former officers of the Central Altagracia.

99 The defendant denies that he has caused any injury to the complainant's business or that he has destroyed its credit as an entity; and defendant further denies that the said corporation had built up or enjoyed any credit, as an entity, in the community and with the colonos. And defendant states the fact to be that after he became President of the said Corporation and assumed its management, the said Corporation began to have credit in the community and with the colonos, who, up to that time, had refused to deal with the said Central on account of their distrust of the officers formerly in charge of the management of its affairs.

The defendant admits that he contracted for and purchased the machinery in his own name and had the same shipped to him individually and as consignee, and states that he did so in pursuance of the agreement between the defendant and the officers of complainant. And the defendant further states that he contracted for, purchased and shipped the said machinery not only because such was the agreement, but also because the manufacturers of the said machinery did not wish to negotiate with any one else connected with the complainant Company except the defendant; and that defendant bought the machinery in his own name so as to help the Central to get the needed machinery in time for the grinding Season. That after the said machinery was installed in the Central it was turned over by defendant to the complainant, who received the price thereof out of the amount of \$30,000 paid by him to the complainant.

100 The defendant does not recollect and has no knowledge or information as to whether any contracts were made by his agents for the grinding of canes in defendant's own name; but defendant denies having, in any instance, entered in the books of the Central the cane so bought in his name, if any was bought,

as purchased at a higher price than that named in the contract with defendant; and he further denies having in any manner violated his duties to the complainant as its President and Managing officer, and he also denies that he ever caused any financial injury to complainant. And defendant states as a fact that the reason why such contracts were made in defendant's individual name, if any were so made, was that the colonos refused to deal with the complainant and preferred to contract with defendant personally; and that all such contracts, if any, were turned over and assigned by defendant to the complainant under the same terms and conditions of the contracts.

The defendant denies that he was guilty of inexpensable or any extravagance in the work preparatory to the grinding Season, and he further denies having expended large sums in excess of what was reasonably necessary; and defendant further denies that his management and direction of complainant's factory has been either extravagant or incompetent. And defendant states the fact that his administration was the most competent and beneficial to the central, the year of his management being the only one in the life of the said Central, in which, notwithstanding the many troubles, difficulty of sucrose and the small amount of cane ground, all expenses were covered and a profit was obtained.

The defendant denies that he discharged the employees in charge of the sugar machinery department of the Central, and he also denies having left the said sugar making department in charge of persons inexperienced and without skill, and that he continued as Chief Engineer an incompetent man; and the defendant states that the fact was that the man in charge of the sugar making department at the said Central, one Mr. Worth required a salary so large that it

101 could not be paid by the said Central, for which reason he voluntarily left the Central; and that defendant then employed a very competent man, at a much lower salary and who gave much better results than the said Mr. Worth. And the defendant further says that the man continued by him as the Chief Engineer, was a man known to him and who was demonstrated by his work to be entirely able and competent as a mechanical engineer and chemist.

The defendant denies that he has in any way mismanaged the service of cane by the railroad cars, and he further denies that during his management of the Central the colonos were unable to cut and haul cane with regularity. And the defendant also denies that during such time the service of cane was irregular, and that there were increased expenses in grinding and decreased results in sugar by reason of any acts on the part of the defendant herein.

The defendant admits that he absented himself from the Island, and states that the purpose of his said trip to the United States, was to try to settle the claim of Messrs. Nevers & Callaghan against the Central Altagracia, Inc., the complainant herein; but the defendant denies that his absence lasted nearly two months and he further denies that the Manager in charge during his absence was left without authority or discretion and without funds.

The defendant denies that the small profit made by the Central during his management was due to any extravagance or incompetence in the management of the Central by the defendant.

The defendant admits that the amount of sugar produced during his management was less than the amount produced during the previous years of the existence of the Central; but the defendant states the fact that although the amount of sugar produced under his management was less than in the former years, all the expenses were covered and a profit made, whereas, during former years, although more sugar was produced, the results were large losses to the Central and no profits whatever. And the defendant further states 102 the fact that the decrease in the production of sugar was due to the fact that the former managers of the Central had made contracts for small amounts of cane, with the exception of the contracts with the hacienda "Tulsa" and Javierre & Gil, and that the last named contract was lost in a litigation carried on by the former directors of the complainant; and that when defendant took over the management of the Central it was too late in the season to make contracts with colonos. And the defendant further states that another cause for the small production of sugar was the inability to get more cane on account of the great competition created by the Centrals newly established in the District of Mayaguez.

The defendant denies that he allowed any of the existing cane contracts to lapse and that he made no effort to extend those which have expired; and defendant states that he has made all the efforts necessary to renew the contracts with the complainant, but has been unable to obtain renewals on account of the bad treatment received by the colonos from the former Managers of the Central, which has made the said colonos distrustful and unwilling to contract with the complainant.

The defendant admits that several thousands of dollars were expended in the purchase of scales and that the said scales were erected at various places along the railroad; but defendant denies that the said expenditure resulted without benefit to the Central; and he further denies that he refused to pay for cane the competitive rates paid by other Centrals. And the defendant as a further answer says that the erection of such scales became necessary in order to compete with other Centrals which had established such scales along the railroad and that the erection of such scales was required by the colonos; and the defendant further states that such scales were erected with the approval and aid of the Vice-President of the Company Mr. F. L. Cornwell.

103 The defendant admits that on one occasion a lot of cane was purchased upon which there was loss; but defendant states that the price paid for such cane was the same as offered for the same cane by the Guanica Central. The defendant denies that he has purchased in his own name any of the indebtedness of the complainant, since occupying the office of President of the Company; and defendant states the fact to be that the said indebtedness was so purchased by him before his election as President, and that he did purchase the said indebtedness at the request of the then

President and the Treasurer of the Company and with their knowledge, for the purpose of avoiding litigation against the complainant and in order to keep the Central as a going concern.

The defendant admits that while he was in control and possession of the books and accounts of the complainant he made an offer of sixty cents on the dollar of the par value of complainant's capital stock for a controlling interest therein; but defendant states that his said offer was made without having carefully examined each one of the entries in the said books and accounts, and relying entirely upon the statements and representations made to the defendant by the holders of the said stock (who were also officers of the Company) which statements and representations proved to be false and fraudulent; and that after making a careful examination of the said books and accounts the defendant formed the opinion that the said stock was and is worth practically nothing.

The defendant denies the allegation that he did nothing to avoid the execution and levy upon the properties of the complainant corporation for the collection of the judgment recovered by Nevers & Callaghan in their suit against the said company, the fact being that defendant made a trip to the United States for the purpose of avoiding the said litigation and that later he applied to this Court

for the appointment of a Receiver among other things for 104 the purpose of avoiding a sale of the properties under the execution and levy of the said Nevers & Callaghan. The defendant states that he could not pay to himself the interest due to him under the contract of the conditional sale between him and the complainant, for the reason that there were no funds out of which to pay the said interest; and that there were not funds with which to pay the advances to the colonos and the salaries of the officers of the Company.

The defendant denies that the transactions between the defendant and the complainant, represented by its Directors, constituted a loan from the defendant to the said Corporation, the fact being, as it conclusively appears from the terms of the deeds executed between the said parties, that the transaction was in fact an absolute sale of the properties to the defendant by the complainant and then a conditional sale from the defendant to the complainant; and the defendant further denies that the said document was executed in favor of defendant solely and only for the purpose of aiding defendant in his endeavor to obtain refection security for his loan, the true fact being that it was the clear and express intention and design of the parties to the said contract that the title to the said properties pass from complainant to defendant.

The defendant denies that he made any loan to the complainant and he further denies having demanded and obtained from the complainant an usurious rate of interest; and the defendant further denies that the salary and stock compensation to be received by the defendant were used as a disguise for the payment of usurious interest; and the defendant denies that any of the contracts under which he claims possession and ownership of the properties of the Central is usurious.

As a further answer to the said bill of — complainant is not entitled to any of the different kinds of relief prayed for in its 105 said bill.

Wherefore the defendant respectfully prays that the said bill be dismissed with defendant's costs.

JOSE DE DIEGO,
MARTIN TRAVIESO, Jr.,
Solicitors for Defendant.

R. VALDÉS,
Defendant.

Cross-bill.

The Cross-bill of Ramón Valdés, One of the Defendants, to the Bill of Complaint of Central Altagracia, Inc.

To the Honorable Bernard S. Rodey, Judge of the United States District Court for Porto Rico:

Ramón Valdés, a subject of the King of Spain, residing in Porto Rico, one of the defendants in the above consolidated actions, brings this his cross-bill herein against the plaintiff Central Altagracia and against the other defendants Nevers & Callaghan, and respectfully represents to this Honorable Court as follows:

I.

That heretofore, to-wit, on or about the 11th day of April 1907, a public instrument executed in the City of San Juan, Porto Rico, before the Notary Public, Francisco de la Torre y Garrido, a contract was made between the defendant Ramón Valdés and the Central Altagracia represented by its Secretary and Treasurer, Mr. N. B. K. Pettingill, who was duly authorized for the execution of the said instrument by a resolution passed by the Board of Directors of the said Corporation, being in need of a certain amount of money, agreed to make and did make a conditional sale of the machinery and apparatus described in the said instrument to the defendant

Ramón Valdés. That the said conditional sale was made for 106 the amount of Thirty-five thousand (\$35,000) dollars, of which sum the representative of the Central Altagracia, Inc. acknowledged to have received to his entire satisfaction the sum of \$25,400 prior to the execution of the deed, leaving the balance subject to the order of the vendor corporation. By the terms of the said deed the said sale was to be consummated in favor of the purchaser Ramón Valdés upon the expiration of the first day of April, 1908.

II.

That before the expiration of the 1st day of April, 1908, which was the date fixed for the consummation of the conditional sale, to-wit, on the 28th day of October 1907 and by a public instrument executed before Augustine P. Barranco, a Notary Public in and for the County of Kings, State of New York, the Central Altagracia

Incorporated, represented by its President F. L. Cornwell (who was duly authorized by a resolution of the stockholders of the said corporation passed at the stockholders' meeting held on the 24th of October, 1907) entered into a contract with the defendant Ramón Valdés, whereby the said Corporation sold, assigned and transferred to the said Ramón Valdés, who accepted such sale assignment and transfer, a contract of lease and all other rights which the Company acquired from Salvador and Gerardo Castelló, and which were the same lease and rights acquired by the said Castelló from Don Joaquin Sanchez de Larragoiti, and the said Company further sold, assigned and transferred to the defendant herein, each and every right appertaining to the Company in and to the machinery, utensils and appurtenances existing in the properties of the Central Altagracia at the time that the said lease was assigned to the Company, as well as such rights as the Company has in and to the machinery, utensils and appurtenances installed by it thereafter on the said properties. The consideration for such sale was the sum of \$35,000, American gold, which the Company acknowledged to have already received from defendant Valdés as follows: \$35,000 which the Company had received by virtue of the instrument dated April 11th, 1907, already described; and the balance of \$30,000 which the Company received afterwards in cash from the defendant Valdés. By the said instrument of October 28, 1907, the instrument of April 11, 1907, was declared cancelled by the new contract. The contract of lease and other properties sold assigned and transferred by the Altagracia Central Inc. to the defendant Valdés, as well as the contract of April, 11, 1907, are fully described in the said instrument of October 28, 1907, a copy of which is hereto annexed and marked "Exhibit A."

III.

That after becoming the absolute owner of the contract of lease and other properties sold assigned and transferred to him by the Central Altagracia, Inc. by the deed dated October 28, 1907, to-wit: on the 2nd day of November 1907, and by an instrument executed before the Notary Public Joseph A. Carras, the defendant and the said Central Altagracia, Inc. represented by its President F. L. Cornwell (who was fully authorized for such purpose by the resolution passed by the stockholders of the said Corporation at a meeting held on the 30th day of October 1907) entered into a contract of conditional sale at the City of New York, U. S. A. by virtue of which contract the defendant Ramón Valdés conditionally sold, assigned and transferred to the Central Altagracia, Inc. the contract of lease and other rights which he acquired from the Central Altagracia Inc. by the deed of October 28, 1907, and also all the rights of the said defendant in and to the machinery, tools and appurtenances existing in the said properties of the Central Altagracia, and which the said Company sold to defendant Valdés by the same deed of October 28, 1907.

IV.

108 That in and by the terms of the aforesaid contract of November 2, 1907, it was expressly provided that the title in and to the aforesaid lease and machinery should not pass and be conveyed and transferred to the Central Altagracia, Incorporated, but should belong to and remain in Ramón Valdés, the defendant herein, until the said Central Altagracia, Inc., had fully complied with and performed certain conditions upon it imposed by the said contract. That among the said conditions was the payment of the full amount of the purchase price of the said lease and the said machinery, and which amount was the sum of sixty-five thousand dollars, payable in four equal installments, due, respectively, on the first day of April of each of the years 1908, 1909, 1910 and 1911, together with interest at the rate of 10% per annum, on all deferred payments and which interest was payable every six months, and to be compound- at such times if not paid.

V.

That it was further provided by the terms of the aforesaid contract that should the Central be unable to pay any of the aforesaid installments when due, the said Ramón Valdés, defendant herein, would be obliged to extend the time for the payment of the said instalment for the further term of one year; provided, however, that the interest due on account of the total sum then owing by the Central Altagracia, Inc., as aforesaid, should be or was paid.

VI.

That it was further provided by the terms of the aforesaid contract that should the Central Altagracia fail to keep and observe any of the conditions by it to be kept and observed, according to the terms of the said contract, and especially should the said corporation make default in the payment of interest when due, or 109 any of said instalments when due, then the said Ramón Valdés, the defendant herein, would immediately and ipso facto be entitled to re-enter into and take possession of the said factory and the said premises and the said machinery, and the said contract or lease, as the true, lawful and exclusive owner of the same.

VII.

That by virtue of the said contract of November, 1907, the said Central Altagracia went into possession of the said premises and factory and took possession of the said machinery and said contract of lease, and still continues to occupy and hold the same.

VIII.

That according to the terms of the said contract there became due on the first day of April, 1908, the first of the instalments above mentioned, amounting to \$16,250.00; and that on the first day of April, 1909, there became due the second of the said instalments

amounting also to the sum of \$16,250.00, together also with the interest aforesaid on the total sum of \$65,000.00 from the date of the aforesaid contract; but that the said Central Altamaria, Inc., has failed to pay all, or any part, of the said instalments, or of said interest.

IX.

That by the terms of the said contract the defendant herein is entitled to the immediate possession of the said premises, factory, machinery and lease, but that the said Central Altamaria, Inc., continues in possession of the same without the permission and without the will of the defendant herein, and refuse to deliver to him possession of the said premises, factory, machinery and lease after default in the payment of the interest and the first two instalments as aforesaid; and that the defendant herein on the date of the said contract of conditional sale was, and now is, the sole and exclusive owner of the said lease and the machinery mentioned in the 110 said contract and is now entitled to the possession of the premises, factory, machinery and lease aforesaid; and that heretofore, to wit, on the second day of June, 1908, the defendant herein demanded of the said Central Altamaria, Inc., the possession of the said factory, premises, machinery and lease, but the said corporation refused to deliver the same to the defendant, in violation of the express terms of the contract.

X.

That the said Central Altamaria, by its bill of complaint herein claims that the said contracts of October 28, 1907, and November 2, 1907, should be decreed to constitute a loan of money and not a sale of property; and that the said Central Altamaria is now seeking to avoid the legal effect of the aforesaid contracts by claiming that such contracts, which by their express terms are an absolute sale and a conditional sale of property, respectively, are loans of money and not what they purport to be by their express terms. And the defendant further alleges that to hold that such contracts are mere loans of money, would deprive the said defendant of the property which he legally acquired under and by virtue of the express and unqualified terms of the said contracts, and would convert the said defendant into a general creditor of an insolvent corporation.

XI.

That on the 16th day of May, 1908, judgment was rendered by this Honorable Court against the said Central Altamaria, Inc., and in favor of the firm of Nevers and Callaghan for a large sum of money then due and owing by the said Corporation to the said firm. That thereafter the execution was issued on the aforesaid judgment and a levy was made by the Marshal of this Court, in pursuance of said Writ, on the aforesaid factory and machinery on or about the 27th day of May, 1908, and that the said Marshal now threatens to sell the said factory and machinery in satisfaction of the said

judgment. And the defendant further states that the said levy so made by the Marshal of this Court, as aforesaid, was illegally made for the reason that the said properties did not on the date of the said levy belong to nor were the property of the Central Altagracia, Inc., the debtor of the judgment in favor of Nevers & Callaghan, but were and now are the property of the defendant herein, according to the express terms and conditions of the contract of conditional sale of November 2, 1907.

Wherefore the defendant respectfully prays that the said contract of October 28 and November 2, 1907, be held and decreed to be valid and subsisting obligations and binding upon the corporation Central Altagracia, Inc., in as much as the said contracts were expressly authorized by resolutions duly passed by the stockholders of the said corporation.

The defendant further prays judgment:

1st. For the sum of Ten thousand dollars (\$10,000) damages for the detention of the said premises;

2nd. That the Receiver of this Honorable Court and the said Central Altagracia, Inc., be ordered to turn over to the defendant herein the possession of the said lease, premises, factory and machinery;

3rd. That the attachment of the said properties made by the Marshal of this Court in the execution of the judgment in favor of Nevers & Callaghan be vacated and the said properties be declared free from the lien thereof; and that the said defendant- Nevers & Callaghan may be enjoined from enforcing the execution upon their judgment against the said property of the defendant Ramón Valdés;

4th. For the cost of the suit.

And that the defendant may have such other and further relief in the premises as equity may require and to your honor may seem meet.

112 And may it please your Honor to grant unto this defendant a writ of subpeena directed to the said complainant Central Altagracia, Inc., and to the defendants Nevers & Callaghan and to the members of said firm George C. Nevers, George B. Ackerson and James G. Callaghan, as copartners, commanding them at a certain time and under a certain penalty therein to be limited, personally to be and appear before this honorable court, then and there to answer to this defendant's cross-bill (but not under oath, the benefit thereof being hereby expressly waived) and to stand to, perform and abide by such further orders, directions and decrees as to your honor shall seem meet in the premises.

And your petitioner defendant shall every pray.

JOSÉ DE DIEGO,

MARTIN TRAVIESO, JR.,

Solicitors for Defendant Ramón Valdés.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Ramón Valdés y Cobán, being first duly sworn, says that he is the defendant mentioned in the foregoing answer and cross bill; that he has read the said answer and also the said cross-bill and knows the contents thereof, and that the contents and statements of both are true of his own knowledge, except as to the matters alleged on information and belief, and that as to those matters he believes them to be true.

R. VALDÉS.

Sworn and subscribed to before me by Ramón Valdés y Cobán, of full age, married and to me personally known, this 17 day of July, A. D. 1909.

JOHN L. GAY, *Clerk,*
 By RICARDO NADAL, *Dept.*

113

(Filed July 27th, 1909.)

In Equity. No. 565.

THE CENTRAL "ALTAGRACIA," INCORPORATED, Complainants,
 vs.
 RAMON VALDES and NEVERS & CALLAGHAN, Defendants.

In Equity. No. 564.

RAMON VALDEZ, Complainant,
 vs.
 THE CENTRAL "ALTAGRACIA," INCORPORATED, Defendant.

Answer and Cross-bill of Nevers & Callaghan to the Bill of Complaint and Cross-bill of the said Ramon Valdez, Filed in the Above-entitled Causes.

These defendants, Nevers & Callaghan, being a copartnership composed of George W. Nevers and James G. Callaghan, citizens of the United States and residents of the city of New York, now and at all times hereafter, saving to themselves all and all manner of benefit of exceptions, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the Bill of Complaint and Cross-bill of the said Ramón Valdez herein filed,—for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

I.

On the sixteenth day of May, 1908, these defendants obtained in this Court a judgment in their favor and against the Central Altagracia, Incorporated, for the sum of fifteen thousand eight hun-

dred seventy-eight and 87/100 (\$15,878.87) dollars, together with interest at the rate of six (6%) — per annum from the 114 thirtieth day of July, 1907, and their costs, said judgment being rendered in the action instituted by these defendants against the said Central Altagracia, Incorporated, in the District Court of the United States for Porto Rico, sitting at San Juan, being law case No. 516.

II.

The said judgment represents the balance of a total indebtedness of twenty-five thousand (\$25,000) dollars for that amount of actual cash delivered by these defendants to the Central Altagracia, Incorporated, on the — day of October, 1906, for the purpose of buying machinery for the Central Sugar factory of the said Central Altagracia, Incorporated; and these defendants, upon information and belief aver that all of the said sum of twenty-five thousand (\$25,000) dollars was so invested by the Central Altagracia, Incorporated, and the necessary machinery for the operation of the said Central Sugar factory was therein installed prior to the first day of January, 1907; and, upon information and belief, these defendants aver that said machinery has been in constant use in the said factory, and now forms a part of its plant, and is a part of the same machinery which one Ramon Valdez is now claiming in this litigation.

That on the 27th day of May, 1908, execution was issued upon the said judgment out of this Court, and that on the 29th day of May, 1908, the same was levied by the Marshal of this Court upon "all the machinery within the factory building of the said Central Altagracia, Incorporated, near Mayaguez, Porto Rico, by posting a like copy of the said execution, together with a copy of the notice of the said levy, at the entrance of the said factory building, leaving the said machinery in the custody of J. Sifre, Manager."

III.

The said Valdez, in the Bill of Complaint as well as in his Answer and Cross-Bill filed in the above consolidated suits, sets up that 115 on the second day of November, 1907, he entered into a contract of conditional sale in the City of New York, by virtue of which the said Valdez conditionally sold, assigned, and transferred to the Central Altagracia, Incorporated:

(1) All his right, title, and interest in and to the lease of the Central Altagracia factory and twenty-two "cuerdas" of land upon which the same was situated, in the jurisdiction of Mayaguez, Porto Rico, which lease was executed on January eighteenth, 1905, between Joaquin Sanchez Larragoiti in favor of one Salvador Castelló;

(2) All of the right, title, and interest of the said Valdez in and to all of the machinery contained in the said Central factory on said date; to wit: November second, 1907.

A copy of the said contract of the so-called conditional sale, correctly translated into the English language is attached to this Answer and Cross-Bill, marked "Exhibit "A," and is made a part hereof to all intents and purposes as if the same were copied herein.

IV.

The said Valdez claims to have acquired the lease and machinery in the last paragraph described, by virtue of a certain document executed in the City of New York on the twenty-eighth day of October, 1907, in and by which the Central Altagracia, Incorporated, purported and pretended to sell and transfer to the said Valdez the said contract of lease and the machinery in the last paragraph described; but these defendants aver that the purpose and object of the said pretended sale was only to secure to the said Valdez the payment of the sum of Sixty-Five Thousand Dollars due to him by the said Altagracia, Incorporated, as in the last mentioned document set forth, and these defendants aver that at the time of the execution of the said last mentioned document, the machinery and assets of all kinds of the Central Altagracia, Incorporated, were reasonably worth three hundred thousand (\$300,000) dollars.

And these defendants further aver that it was the understanding and agreement between the said Valdez and the said Central 116 Altagracia, Incorporated, that such pretended sale to him of the said machinery and lease was to be in the nature of security only, and for that purpose the so-called conditional sale of November second, 1907, was immediately made by the said Valdez back to the Central Altagracia, Incorporated, it being understood by the said parties, that under the laws of Porto Rico, the Central Altagracia, Incorporated, could not execute a mortgage upon such machinery and lease, they having the character of personal property (bienes muebles) as said parties believed.

V.

These defendants aver that the said pretended sale by the Central Altagracia, Incorporated, to Valdez of the said machinery was null and void as against the creditors of the Central Altagracia, Incorporated, and particularly as against these defendants and the Succession of the said Sanchez Larragoity, for the reasons:

(1) As regards the attempted transfer of the lease, the Central Altagracia, Incorporated, had no power to transfer the same to the said Valdez or to any other person or Company.

(2) The Central Altagracia, Incorporated, had no power under the law of Porto Rico to transfer by such a document as that executed on the twenty-eighth day of October, 1907, or in any other manner, the machinery therein described, because the same constituted permanent fixtures attached to the soil, which could only be transferred with the latter by the owner thereof.

These defendants state that neither the pretended sale from the Central Altagracia, Incorporated, to Valdez, nor the alleged conditional sale from Valdez to the Central Altagracia, Incorporated, has ever been registered in the Registry of Property, and the defendants further allege that the said documents were secretly made and

117 purposely kept from public knowledge by both the officers of the Central Altagracia, Incorporated, and the said Ramon Valdez, until long after defendants herein obtained their said

judgment and after the levy of the said execution as hereinafter set forth. These defendants aver that the action of the said Central Altagracia, Incorporated, and of the said Ramon Valdez, in so executing the said documents and in keeping the same secret, constituted a fraud upon all of the creditors of the Central Altagracia, Incorporated, and particularly upon these defendants. (A copy of the said document executed by the Central Altagracia, Incorporated, to Ramon Valdez, duly translated into the English language, is attached hereto and made a part hereof, being designated "Exhibit 'B.'")

VI.

The said lease executed on January eighth, 1905 between the said Joaquin Sanchez Larragoiti and the said Salvador Castello, was a contract of a personal nature involving the reposal of special confidence and trust by the said Joaquin Sanchez Larragoiti in the said Salvador Castello; and, according to the terms thereof, no person or corporation could acquire said lease or work the said Central Altagracia property who was not brought in by the said Salvador Castello whom the said Salvador Castello directly and personally did not interest in the working thereof. The said lease further prohibited in express terms that the said Salvador Castello should under any circumstances, alienate, mortgage, or affect the said Central or the twenty-two "cuerdas" on which the same was situated, with any lien or encumbrance whatsoever. (A copy of the said lease, duly translated into the English language is hereto attached and designated "Exhibit C.")

VII.

Although this Court has, in a certain action instituted by the heirs of Juan Sanchez Larragoiti against the Central Altagracia, Incorporated, and Salvador Castello, rendered a judgment to the effect that Castelló had the right under the terms of the lease to transfer it to the Central Altagracia, Incorporated, these defendants aver that if such be the law, certainly under the terms of the said lease the said Castelló exhausted such powers in that regard as the court has determined him to have, and the Central Altagracia, Incorporated, had no power to alienate or encumber in any manner whatsoever, without the consent of the Sucesión de Sanchez Larragoiti or of the said Salvador Castelló, the said Central and the machinery therein and the twenty-two cuerdas of ground upon which the same is situated.

VIII.

These defendants aver that it is the design and purpose of the said Valdez to appropriate to his own use, all of the property above referred to, amounting perhaps in value to nearly half a million dollars, for the payment of an alleged debt of Sixty Five Thousand Dollars, notwithstanding that in truth and in fact, Valdez is but a general creditor whose claim these defendants, upon information and belief, aver to be largely padded with fictitious claims and usurious interest.

Forasmuch, therefore, as these defendants believe that it would be inequitable and oppressive to permit the said Valdez to assert his claim to the machinery and lease herein above described, and that it would be inequitable to these defendants to deprive them of the benefits of their said judgment and levy of execution, they respectfully pray:

(a) That the court decree that the said Valdez is not entitled to the said lease or any part of the machinery hereinabove described because of the documents hereinabove referred to or because of any indebtedness due and owing by the Central Altagracia, Incorporated, to the said Valdez, but that such indebtedness shall be decreed by the court to be of a general character to be realized only by a judgment or decree for such amount as may be due and just and the sale of such property as may belong to the Central Altagracia, Incorporated, subject, however, to the priority of right of these defendants and of such other persons as may have priority.

(b) That these defendants may be permitted to enforce, without delay, their said execution for the full amount of the judgment, with interest and costs.

(c) That the said pretended sale from the Central Altagracia, Incorporated, to the said Valdez, and the so-called conditional sale from Valdez to the Central Altagracia, Incorporated, herein described, be held to be null and void.

(d) That the court decree that the Central Altagracia, Incorporated, had no power to transfer to the said Valdez or to any other person, the said contract of lease executed between Sanchez Laragoiti and Salvador Castelló.

(e) That the receivership herein be immediately terminated and that the orders and injunctions heretofore made by this Court restraining these defendants from enforcing their said execution, be rescinded, and that the Clerk be instructed to issue forthwith an alias execution, and that the marshal of this court proceed to enforce the same upon such new machinery as has been placed in the Central Altagracia subsequent to its taking possession of the said property.

(f) That the Court perpetually enjoin the prosecution of the action at law instituted by the said Valdez against the Central Altagracia, Incorporated, being No. 563, San Juan Division.

(g) That the Court will grant such other and further relief in the premises as in equity may be right and proper, and that these defendants be entitled to all costs incurred by them in the present litigation.

(Filed July 28, 1909.)

Equity. 565.

CENTRAL ALTAGRACIA, INCORPORATED,

vs.

RAMÓN VALDÉS & NEVERS & CALLAGHAN,

and

Equity. 564.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

The Replication of Ramón Valdés to the Answer of Nevers & Callaghan.

The replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants Nevers & Callaghan, for replication thereunto, says that he does and will ever maintain and prove his said bill to be true, certain and sufficient in law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied to by this replicant, without that that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct — humbly as in by his said bill he has already prayed.

MARTIN TRAVIESO,
Solicitor for Plaintiff Ramón Valdés.

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(Filed July 28th, 1909.)

Equity. No. 565.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMÓN VALDÉS and NEVERS & CALLAGHAN,

and

Equity. No. 564.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

*The Answer of Ramón Valdés, Complainant, to the Cross-bill of
Never & Callaghan, Defendants.*

The complainant Ramón Valdés, now and at all times hereafter, saving to himself all and all manner of benefit of exceptions, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the Cross-Bill of the Defendants Nevers & Callaghan herein filed, for answer thereto or to so much thereof as the said complainant is advised it is material or necessary for him to make answer to, answering says:

First. The complainant admits the allegations contained in paragraphs I, II, and III of the said cross-bill.

Second. The complainant denies that the purpose and object of the contract of sale of October 28, 1907, was only to secure to the complainant the payment of the sum of \$65,000 due to him by the Central Altagracia, Inc.; and complainant states the fact that the deed of October 28 was an absolute sale of the properties therein described by the said Central to this complainant. And the complainant further denies that at the time of such sale the machineries of the said Central were worth the sum of (\$300,000) three hundred thousand dollars. And the complainant denies the allegation of paragraph IV of the said cross bill that there was an agreement or understanding and agreement between complainant and the Central Altagracia that the contract of sale aforesaid was to be in the nature of a security only; and the complainant denies that the deed of conditional sale was executed to carry out such alleged purpose.

Third. The complainant denies each and all of the allegations contained in paragraph V of the said cross-bill; and the complainant specifically denies that the action of complainant and the said Central constitutes a fraud upon any of the creditors of the said Central, the fact being that such sale was made bona fides and for a good, real and valuable consideration.

Fourth. The complainant denies the allegations contained in paragraphs VI and VII of the said cross-bill.

Fifth. The complainant denies that the properties involved in the said contracts amount in value to nearly half a million dollars as alleged in paragraph VIII of the cross-bill; and he further denies the allegation that he is a mere general creditor of the Central and that his claim is fictitious and padded with usurious interest. And complainant states that he is the sole and true owner of the properties sold to him by virtue of the aforesaid contract of October 28, 1907. And the complainant denies every other material allegation in the said cross-bill contained, which is not expressly admitted or denied.

Therefore, the complainant respectfully prays that the said cross-bill be dismissed, with this complainant's costs most wrongfully sustained.

MARTIN TRAVIESO, JR.,
Solicitors for R. Valdés.

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(Filed July 28th, 1909.)

In Equity. No. 565.

CENTRAL ALTAGRACIA, INC., Complainant,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN, Defendants,

and

In Equity. No. 564.

RAMÓN VALDÉS, Complainant,

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN, Defendants,

Replication.

The Replication of Ramón Valdés, Plaintiff, to the Answer of Central Altagracia, Inc.

The replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto, says that he does and will ever maintain and prove his said bill to be true, certain and sufficient in law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant, without that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is

true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct, — humbly as in and by his said bill he has already prayed.

MARTIN TRAVIESO, JR.,
Solicitors for Plaintiff.

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(Filed September 25, 1909.)

Nos. 564 and 565. Equity.

RAMÓN VALDES
vs.
CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDÉS and NEVERS & CALLAGHAN.

*Statement of Findings of Fact and Law and Opinion of the Court
on the Merits.*

The above two suits which were consolidated for the purposes of a receivership, and for the purposes of trial, are bills in equity under which a receiver was appointed and concern the property known as the "Altagracia Sugar Central" near Mayaguez, on this Island. The property previous to January 1905, consisted of a relatively small sugar mill of a somewhat ancient pattern and twenty two cuerdas of ground, upon which it was situated with perhaps some other personal property. At that time it belonged to a man by the name of Joaquin Sanchez de Larragoiti who was then a resident of the city of Paris, France. On the 18th of January, 1905, this Mr. Sanchez de Larragoiti entered into a private contract or lease of said premises with one Salvador Castelló, running for a period of ten years thereafter. Under this contract, Castelló was to have the right to continue said sugar central for the manufacture of sugar and to put in any new machinery he saw fit, and was to pay his lessor 25% of the profits accruing therefrom, and also had the right as to the remaining 75% of the profits to interest anyone he saw fit with himself therein, as he might 125 deem convenient.

About the 6th of June following the date of this contract, the parties extended its term for a period of ten additional years, so as to make it a twenty year term in all. A few days later, on July 1st, 1905, this lessee Castello, entered into a contract with one Frederick L. Cornwell, and transferred all his right in this lease to him as trustee, for the benefit of a corporation to be immediately organized, and to be known as the Central Altagracia Incorporated. Castello was to have certain stock and a certain official position in

this new concern as a consideration for the transfer. Mr. Cornwell, aided by Mr. N. B. K. Pettingill, then became chief promoter of the concern and immediately organized under the laws of the State of Maine a corporation as intended, and transferred all of the rights that had thus been transferred to Cornwell in trust, to the new corporation which immediately proceeded to business, and within three years next following installed upon said twenty two acres of ground a large amount of new sugar machinery and other improvements said to have cost with freight and installing charges added, quite or over two hundred thousand dollars. This corporation proceeded with its business as a sugar grinding central with more or less success, and with more or less trouble with its stock-holders, colonos and creditors. See *Wilson v. Central Altagracia*, 2 P. R. Fed. 429, and *Central Altagracia, v. Javierre & Gil*, 3, *id.* 256, and same *v. Nevers & Callaghan* 3, *id.* 496; also equity suit docket No. 579, San Juan Division, Larragoiti heirs *v. Castelló* and *Central Altagracia*, and equity suit No. 203 Mayaguez Division, *Castelló et al. vs. Central Altagracia*.

On April 11, 1907 owing to the failure of Ceballos & Company and for other reasons, the concern became somewhat involved financially, and was forced to borrow from the complainant Ramon Valdes, in

suit 564 of the caption, thirty five thousand dollars for which 126 it gave him some sort of an instrument in the nature of a "Venta con Pacto de Retro"; but later in October of that same year, was forced to borrow from him an additional sum of thirty thousand dollars, making the whole debt sixty five thousand dollars. It seems that this money was needed to finish putting in the machinery as planned. At the time of giving this additional money to the central which occurred in the city of New York, the two transactions were merged and some very peculiar instruments were entered into between the parties in the office of Curtis, Mallet-Prevost & Colt, who it seems acted as attorneys for all the parties. First what purports to be an absolute sale of the entire rights that the central Altagracia had in and to the sugar mill and plant was executed to Valdes, and he in turn immediately made a sale back to the corporation of the same property. Then the corporation elected Valdes its President and Manager, etc. He had been vice-president and a Director previous to that time since first lending it money and he immediately took charge of the plant for the ensuing grinding season with a view to paying himself back in installments as was stipulated in the contracts between the parties, but the property was according to the instruments mentioned to belong to him absolutely until he was thus repaid, etc.

It was fully in evidence on the trial that from the time Valdes first advanced any money to the central, he took considerable interest in its affairs. During his connection with the concern he personally purchased, often at heavy discounts it is true, large amounts of pressing debts and claims against it, which it is contended because of his then fiduciary relation to the concern he cannot now collect the face value of, but for which he can now only collect the amount he actually paid therefor with interest. It is also in

evidence that he loaned Mr. Cornwell \$7,500 with some of the capital stock of the central as security, and that he afterwards was forced to take the stock either on account of or in satisfaction of the 127 debt. It is further in evidence that he received an additional 150 shares of the capital stock of the central. He contends that this was given him in consideration of his work in and in the nature of a commission for purchasing the machinery for the plant, in addition to a salary of \$3,000 per annum which he was to have, although he collected only \$500 for two months' wages. Counsel for the central contends that not only were his position as Director and Vice President, and later his position as President as well as the salary and the 150 shares of the capital stock given him as a consideration for making this advance or loan to the central, but that such were the terms which Mr. Valdes demanded and increased them from time to time, and that therefore, no matter what the instruments executed between the parties were or can be called, or the parties were forced to call them, owing to the peculiar situation and exigencies of the case, and the absence of a chattel mortgage law in Porto Rico, still the transaction is and was essentially a loan from Valdes to the central, for which not only the then officers but the stock-holders by a meeting held were willing he should have. The central therefore contends, that Mr. Valdes has been the recipient of usurious contracts and interest and that in this sort of a suit the central should have all such legal advantage of such fact as the law gives it.

It developed also that Mr. Valdes while thus managing the property personally and necessarily, expended some \$14,000, or more, over and above the \$65,000 mentioned, in merged advances which he made to the concern. The central contends that, at any rate as to all the debts which he purchased, and as to all advances which he thus or otherwise made over and above the \$65,000, he is purely and simply a general creditor therefor, and as to those debts and claims that he purchased for less than face value the central is entitled to the benefit of such reduced purchase price.

128 During the trial Mr. Valdes introduced evidence tending to show that outside of his stock purchases he has advanced nearly \$94,000, to the central including the \$65,000 represented by the contracts made in New York. An examination of this account shows it to be to a considerable extent made up of interest and other items that he may or may not be entitled to recover, as we shall hereafter find.

Valdes apparently did his best in and about the management of the plant and in and about purchasing and installing machinery, but the season being then so far advanced as that for one cause or another, little if any success attended the enterprise, and in consequence the payments to him and to all other creditors were defaulted. During this management of Valdes, of the sugar mill considerable friction arose between the promoters and former managers and chief owners Messrs. Pettingill & Cornwell, on the one side, and Mr. Valdes on the other, and so bitter did this become as that on June 2nd, 1908 Valdes, claiming to be the owner of all of the rights

of this corporation in and to this sugar mill and plant filed a suit at law No. 563, on the docket, to eject the corporation entirely therefrom, and to install himself as the absolute owner of all the corporation's rights therein even against the corporation's creditors. The basis for this suit of his was the absolute sale of the property so alleged to have been made to him in New York, in October 1907, which instrument was then presumably for the first time brought to the knowledge of others than the actual parties thereto and their attorneys.

Valdes immediately followed this suit at law with a petition in equity for a receiver, which was filed as suit No. 564, as mentioned in the caption.

Immediately thereafter, and on the said same day of June, 1908, Messrs. Pettingill & Cornwell as representing the central Altagracia Incorporated, came in, and filed suit No. 565, as mentioned in the caption, also petitioning for the appointment of a receiver 129 for the plant and property and alleging many things with reference to the action and management of Valdes concerning the property while in his charge etc. A few days later, and after several hearings were had, the Court consolidated the two equity suits Nos. 564 and 565, and appointed a temporary receiver of the property. A few months later however, and after much additional litigation had transvened in the matter, and after debts had been created, this temporary receiver was discharged as such, and appointed permanent receiver, with power to borrow money and proceed with the management of the property as a going concern in an effort to enable it to pay its debts and give the Court an opportunity to assert the rights of the respective parties. All this procedure was largely at the request of and in accordance with the wishes of all of the parties to these particular suits. This receivership has continued ever since (nevertheless the receiver's salary was reduced to a care-taker's salary many months ago) but unfortunately owing to short crops in that vicinity and to many other annoying, unfortunate and unavoidable causes, resulted in a loss of about \$17,000, some of which is represented by outstanding receiver's certificates and all of which debt is a first lien upon all the rights of the Central Altagracia Incorporated, in and to the sugar plant and premises about which we are speaking.

The record of the two causes mentioned in the caption has grown quite large, and during the continuance of this receivership the Court called all of the counsel in said consolidated suits as well as counsel in several other suits concerning the property, together and made strenuous efforts to bring this unfortunate litigation to some sort of a satisfactory conclusion. These meetings were held both at San Juan and Mayaguez. At one time the Court made an effort and expressed its willingness to permit the issuance of receiver certificates therefor if the interest of the Sanchez de Larragoiti heirs (the original lessor having died) could be purchased for the central

130 at a reasonable price, so that there might be a title in fee in the Central Altagracia Inc. and that the Court might thus avoid the continuous applications and efforts of the represent-

atives of that estate to oust everybody connected with this litigation from the premises.

Unfortunately all this effort of the court in which most of the counsel joined, proved futile and nothing could be done.

In the files of the consolidated causes mentioned in the caption will be found extensive written memoranda made by the Court from time to time, setting out with more or less detail all these different efforts it made with a view to ending this litigation. Finally, in the latter part of July 1909, the Court went to the Mayaguez district and there, after several conferences with counsel in all the suits connected with this litigation, passed upon pending demurrers, etc., with a view to raising the proper issue so that the rights of the parties might be settled.

For a time this action of the court appeared to meet the approval of all counsel concerned, and the bills or petitions in both suits were amended and cross-bills filed so that he could easily see the real issue between all the parties connected with the suits mentioned in the caption. See the two statements made and signed by the Court and placed in the files setting out these facts under date of July 21 and 28, 1909. However, after this action on the part of the Court, the Central Altagracia by one of its solicitors, N. B. K. Pettingill, under date of July 27th, filed his own affidavit claiming he could not safely go to trial because of the necessity for taking depositions of several witnesses whose names were set out in the affidavit, and who lived in New York and elsewhere in the States, and attempting also to set out what he expected to prove by such witnesses and stating that he withdrew any offer or intimation he may have theretofore made that he would immediately proceed with the trial. However, all other counsel connected with the matter being present, and the day having arrived when the trial on the

merits was to proceed, and the Court after having examined

131 the answers and the cross-bills, concluded that there was no necessity for further delay and that the parties during the more than a year that the matter had been in the hands of the court and the property in charge of its receiver, had had ample time within which to perfect their pleadings and that if it in fact thereafter became necessary as shown by the proofs, that the evidence of any of the witnesses whose names were set out in the affidavit should in fact be required, the court would hold the proceedings for such purpose. Thereupon the Court without the intervention of an examiner or master proceeded for several days both there and later at San Juan, and received evidence on the merits from complainants Valdés and the intervenors Nevers & Callaghan, in which hearing both Messrs. Pettingill and Cornwell testified at great length with reference to the rights of the Central Altagracia Incorporated, although they took no part as counsel for the central in the proceedings on the trial, save incidentally as such witnesses. On this hearing also all proper exhibits and proofs were received and the stenographer's notes when afterwards written out, and made a record of upwards of 200 pages of typewritten matter. Immediately at the end of the hearings, counsel for Valdés and for the intervenors

Nevers & Callaghan and also for the owner of the fee of the property the Larragoiti estate, addressed the Court orally at great length, and afterwards filed elaborate written arguments and briefs. Counsel for the Central Altagracia Inc. took no part in the oral arguments and filed no brief but insisted that he was entitled to except to the answers of Nevers & Callaghan and Ramon Valdes, in suit 565, at some future time which he did under date of September 7th, 1909, but which exceptions because of the Court believing they were introduced for mere purposes of delay and because they were manifestly frivolous in character, were overruled.

For several days last past we have read and examined the evidence thus taken and written out from the stenographer's notes, 132 and have examined the several large exhibits introduced, so that at the present time we have the contentions of the different parties fully before us, and well in mind.

It transpires that several months before any negotiations of any kind or character had taken place, between the Central Altagracia and Valdes, the former obtained a loan of some \$25,000 from the firm of Nevers & Callaghan of New York, promising to deliver the sugar crop of the mill for the ensuing season to repay the same, but failed to do so, and left a large part of said debt due and owing. This firm according to all we can gather from the record, had no knowledge of the transactions between the central and Valdes, or these so-called sales of the entire property of the concern to him when the same are purported to have been made or at any time previous to the application for the appointment of the receiver, as none of such instruments were recorded in any registry of property.

We might pause here to say that the Registry of Property of the District where this land and plant are situated contains no entry concerning the property in question, save that which brings the title into Joaquin Sanchez de Larragoiti, the lessor of Castello. All the other transactions as heretofore mentioned, it seems were not and could not be registered under the law.

After Nevers & Callaghan's account became due, and on December 12, 1907, they filed a suit (516, Law Docket) in this court, on the note that represented it, and thereafter on May 16th, 1908, recovered judgment for nearly \$16,000. Under this judgment, on the 29th of May 1908, they caused execution to be levied on "all the machinery within the factory building of the said Central Altagracia, Incorporated."

On June 3rd, while the contest for the receivership was going on, we made an order suspending this execution of Nevers & Callaghan, thus levied upon the machinery of the sugar mill, until the further order of the court, but providing in the order 133 that such suspension should in no manner affect the lien rights if any existed by virtue of such execution in favor of Nevers & Callaghan. This action of Nevers & Callaghan in thus levying their execution is no doubt what precipitated at that particular time this controversy, or at least caused both the other contestants to each apply for a receiver, although the same result would at all events have soon followed.

We have made the foregoing considerable statement of facts connected with this litigation without, as can be seen, showing what the real controversy is.

As we see it, the effort of the Central Altagracia through their attorneys by their action in refusing to take part in the trial on the merits, is to secure delay in the proceedings. We cannot imagine any other object, because from the developments at the trial, it is manifest that every fact that can be known about the matter is well in evidence and that nothing remains that necessitates the taking of the depositions of any of the witnesses in New York or elsewhere, mentioned in the affidavit of July 28th, of Judge Pettingill, solicitor for the Altagracia, which he filed as stated at the time he endeavored to avoid proceeding with the trial on the merits.

The effort on the part of Mr. Valdes all through the litigation has been to show—and he has made strenuous efforts in this behalf—that he is the absolute owner of all the new machinery put in this plant and in addition the owner of all the lease and machinery rights of the Central Altagracia in the sugar plant and land in question, and that he is entitled as against that corporation and all its stockholders and creditors to immediately take possession thereof. Nevers & Callaghan simply claim that in and by their said suit and the levy of their said execution, they have obtained as against the machinery an absolute lien superior at least to Mr. Valdes's or any other creditor, and perhaps even superior to the

rights and interests of the estate of the original lessor, Larra-
134 goiti. Counsel for Nevers & Callaghan, claim that Valdes

is nothing but a general creditor, because as they allege, the Central Altagracia could not sell him any right in the plant or land in question, and because the alleged transfers were not recorded so as to give notice to existing or future creditors, or anybody else and because a chattel mortgage is unknown to the laws of Porto Rico.

The record contains much evidence tending to show that the main object of the officers of the Central Altagracia and Valdes, was that the latter should have security for his advance of money. Neither Mr. Pettingill or Mr. Cornwell denied that, but on the contrary during the giving of their evidence several times affirmed it.

As stated, we have examined with great care the contentions of counsel for Valdes and Nevers & Callaghan, and while their laborious efforts are commended for industry, their arguments in many instances tend to carry us away from the real issue. And therefore we think we can settle this unfortunate matter by confining ourselves to the triangular controversy that is before us, without affecting the alleged or real rights or interest of others not parties to these consolidated suits.

We are unhesitatingly of the opinion that the entire matter between the Central Altagracia and Mr. Valdes, no matter what they may call it in the instruments executed between them, was and is as contended by the Central, a loan of money for which security was intended to be given. As between the parties of course, the instruments they made would ordinarily be binding, but in a suit in

equity like this, where its designation as an outright sale is attacked, the court will look behind the face of the instruments to ascertain what the transaction really is. See our opinion in Am. Colonial Bank v. Cabrera et als., 3 P. R. Fed. 14, and cases cited.

It is therefore our opinion that the transaction as between 135 those two parties is an equitable mortgage or lien, and that because of the breach of the conditions of it, Valdes is entitled to have it foreclosed. We think though, that this equitable mortgage or lien, should be thus secured and guaranteed to him only for the \$65,000 and interest mentioned and that as to every other advance that he made to the concern, or paid for it, he is but a general creditor. This latter statement, of course, does not apply to his stock purchases, because as to those he stands in the same position as any other stockholder and his expenditures on that account are probably a complete loss.

We also hold that as to all of the accounts, promissory notes, claims and debts which he assumed or paid for the concern, he is entitled to come in only as a general creditor therefor, and only for the actual amounts, plus interest which he paid therefor, as set out in the notes purchased, or at 6% per annum on claims or debts where the interest is not mentioned, and that he is not entitled to claim the face value thereof against the Central, because at the time he made such purchases or so guaranteed such debts, he was both a stock-holder and an officer of the corporation itself, and it is fundamental in law that no person occupying any such fiduciary relation to a corporation, can at such time, purchase claims or debts against it at a discount, without giving the concern whose officer he was, the benefit of such discount. See our opinion in the Canovanas case, 2 P. R. Fed. 195, and cases cited, where we went fully into the law on this question.

The next proposition, that is, as to what the relative situation as between this equitable lien or mortgage of Valdes on the one hand, and the execution of Nevers & Callaghan on the other, is not so easy,—but on the whole, under the rule that the law favors the diligent, and that the levying of an execution fixes a plaintiff's rights

136 in the absence of superior rights in others, we feel bound to hold, and do hold, that Nevers & Callaghan's lien is superior to that of Valdes. It is our opinion, that any creditor of this corporation who secured a judgment and a levy upon any of the property rights of the Central Altagracia, previous to June 2nd, 1908, when Valdes applied for a receiver to take charge of it, unquestionably both at law and in equity has a superior right to Mr. Valdes,—and this, because of the peculiar situation of the law in Porto Rico. A chattel mortgage is unknown to the jurisdiction and no record was made or could be made, and so far as we know, no creditor knew anything about Mr. Valdes' alleged rights previous to his application for a receiver, when he for the first time produced his alleged deed and sued to eject everybody from the property in question. See suit No. 563, law docket this district. The fact that he, months previous, took possession of the plant and managed it, does not change the situation, because he took possession as Presi-

dent of the Company, and therefore permitted the whole world to believe that it was still the property of the Central Altamaria Incorporated. From the moment that he filed his suit No. 563, aforesaid and his bill in suit 564 of the caption, his situation was in our opinion different, and from that moment his lien which we hold to exist, took effect as against non-diligent creditors who had neither obtained judgments or liens previous to that time.

We are not inclined to give ear to the oft repeated statement of counsel for Nevers & Callaghan, that Mr. Valdes' action all through this matter amounted to a fraud in law upon all the creditors of the main concern, because the Central itself through meetings of its stock-holders authorized the transaction with him, and the officers of the concern importuned and implored him to save them in their financial stress. Further, the evidence clearly shows that

137 Mr. Valdes very reluctantly advanced money to the concern at all, and did so largely as matter of friendship for some of the officers of the corporation. It is fully in evidence that he performed a large amount of services for which the \$500 in the way of salary received has but ill paid him, and of course, the large amount of money he spent for the purchase of stock, is, as stated, under the circumstances probably a complete loss. Further, his action in spending a large amount of money over and above his mortgage lien, in paying for the installing of the machinery, and in silencing outside threatening creditors by purchasing their claims and accounts is ample evidence, that instead of being an enemy with ulterior designs, he was at that time the financial friend of the concern. He would probably now willingly make a large sacrifice and discount on his claim if he could secure his money, and have done with it all, in fact he so stated several times while testifying. He is probably the largest general creditor outside of what we are here holding, that he has an equitable mortgage lien for. It is our opinion therefore that notwithstanding the unfortunate situation, he is entitled to the thanks rather than to the censure of at least the officers of the corporation.

We do not desire that anything said in this memorandum of our views should be construed as any reflection upon the officers of the Central Altamaria Incorporated. On the contrary, we think they have shown their good faith because if our information is right, they have invested their all in the enterprise, and have perhaps lost it. They did this without taking to themselves any security for their own protection, and therefore share the same financial fate as other stockholders. In addition to this they have probably lost their years of hard work in and about the effort to make the enterprise a

success. In truth it can be said that the failure of the concern cannot be ascribed to the individuals connected with it.

True, incompatibility of tempers between the officers and some stock-holders had its effect, but droughts and failure of crops, as well as the unfortunate failure of Ceballos & Co., and above all, the sudden erection of competitive enterprises more than anything else tended to this unfortunate result.

We therefore find and hold that the equitable mortgage and lien

which Mr. Valdez is entitled to upon all of the rights of the Alta-
gracia, in and to the said lease, plant, land and property of the
Central Altagracia should be foreclosed, and in default of the pay-
ment to him of the amount due as here found the property should
be sold according to law at as short a day as may be in order to en-
force such payment and that at such sale Mr. Valdes shall have the
right to be a bidder on account of his said lien to the extent of the
principal sum of \$65,000 plus interest as mentioned in the instru-
ments between the parties, to the date of the sale.

We further find and hold, that out of the proceeds of such sale
the claims shall be paid in full in the order following:

1. All outstanding receiver certificates, taxes, accounts and other
debts of the receivership, which shall include the sum of \$500 as
overdue wages to Benjamin S. Cornwell, which in the opinion of the
Court is a preferred claim, and ought to have been paid at the in-
cipient of the receivership.
2. The claim in full of Nevers & Callaghan to the date of the
sale.
3. The lien aforesaid of Mr. Valdes, and
4. All other creditors of the concern as shown in the re-
ceivers report filed under date of July 27th, 1909,—such
creditors including Mr. Valdes, to be paid pro rata in so far
as may be.

Therefore, a decree will be immediately prepared by counsel for
said Valdes, making the findings of fact and law herein indicated
foreclosing Mr. Valdes' lien and in default of payment within a short
day, providing for the sale as herein set forth, and further providing
that at the time of the sale,—in case Mr. Valdes is the purchaser,—
the amount of the receivership debts, and of the entire cost of the
sale and court costs and the debt of Nevers & Callaghan, shall be
paid into the Registry of the Court.

The cause is retained for all necessary purposes.

B. S. RODEY, *Judge.*

(Filed October 9, 1909.)

No. 564. Equity.

RAMON VALDES
vs.
CENTRAL ALTAGRACIA, INC.

Consolidated with

No. 565.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES and NEVERS & CALLAGHAN.

Order.

And now on this 9th day of October 1909, Martin Travieso Esq., one of the counsel for Ramón Valdés in the above entitled consolidated causes, having inquired of the Court as to what name shall be inserted in the decree as the person to make the sale of the property herein, the Court announces from the bench that there are special reasons therefor and it is therefore ordered that:

Francisco Fano, be and he hereby is appointed Special Master in Chancery herein to make the sale under the decree about 140 to be entered herein.

B. S. RODEY, Judge.

Journal Entry, October 14, 1909.

564. Equity.

RAMON VALDES
vs.
CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

565.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDÉS and NEVERS & CALLAGHAN.

Final Decree of Foreclosure and Sale.

This cause came on to be heard at the April 1909 Term, in open Court, upon the bills of complaint in the two consolidated causes, the answers and cross-bills of the defendants in both cases, the replications and answers to the cross-bills of Ramón Valdés and Nevers &

Callaghan, and the proofs in said cases and the argument of counsel for Ramón Valdés and counsel for Nevers & Callaghan; and

It appearing to the Court that a bill of complaint was filed in this court on the second day of June, 1908, by Ramón Valdés against the Central Altagracia Incorporated, praying for the appointment of a Receiver of the property of the said corporation and for the delivery to him of the possession of the said properties in compliance with the express terms of certain contracts between the said Ramón Valdés and the defendant corporation, which contracts were introduced as evidence, and that on the same second day of June, 1908, the 141 defendant Central Altagracia, Inc., filed its demurrer to the said bill of complaint; and

It further appearing to the Court that on the said June 2, 1908, the Central Altagracia, Inc., filed in this Court its bill of complaint against Ramón Valdés, praying for the appointment of a Receiver of its properties and charging the defendant with negligence and mismanagement of the said property while being President and Director of the corporation, to which bill of complaint the defendant Valdés demurred; and

It further appearing to the Court that the said two cases were consolidated and a temporary Receiver appointed, who afterwards was appointed permanent Receiver with power to borrow money and manage the property of the Central Altagracia Incorporated; and

It further appearing to the Court that the firm of Nevers & Callaghan, defendants in the two consolidated causes, filed their petition of intervention in said causes claiming that they had a lien over the properties of the Central Altagracia, Inc., superior to the claim of Ramón Valdés, by virtue of an execution levied upon the said property on the 29th day of May, 1908, and that the said Nevers & Callaghan demurred to the bills of complaint in the two causes; and

It further appearing to the Court that on July 17th, 1909, at a session of the Court held at Mayaguez, the demurrers in both causes were overruled pro forma, without objection from any party, with a view to bringing the said causes to an issue; and

It further appearing to the Court that soon after the overruling of the demurrer in both causes, the Central Altagracia Incorporated, defendant in suit No. 564, filed its answer to the bill of complaint of Ramón Valdés, to which answer the said Valdés immediately replied,

and that Nevers & Callaghan, also defendants in said suit 142 No. 564 filed their answer and cross-bill to the bill of Ramón Valdés, whereupon the said Valdés filed his replication and answer to the said answer and cross-bill, and

It further appearing to the Court that soon after the overruling of the demurrer in suit No. 565, Ramón Valdés, one of the defendants therein, filed his answer and cross-bill to the bill of complaint of Central Altagracia, Incorporated, whereupon the other defendant Nevers & Callaghan filed their answer to the said cross-bill, of Ramón Valdés, and that the Central Altagracia, Inc., refused to file its replication to the Answer of Ramón Valdés, although it was given ample time and opportunity to file its said replication, and that the said Central Altagracia, Inc., although repeatedly requested to, refused

to take any part in the trial of the consolidated cases and to proceed with the said trial, insisting that the depositions of several absent witnesses were necessary for the presentation of its case and alleging that it had the right to file exceptions to the answer of Ramón Valdés; and

It further appearing to this Court that such efforts on the part of the Central Altagracia, Inc., in insisting on the taking of depositions, which the Court found to be utterly unnecessary, and in refusing to proceed with or take any part in the trial of the cases, were made solely for the purpose of delaying the proceedings in said causes, there being no necessity for further delay; and

It further appearing to the Court that the Central Altagracia, Inc., on the 7th of September, 1909, filed its exceptions to the answer of defendant Valdés, in suit 565, and that said exceptions were overruled upon the grounds that they were manifestly frivolous in character and were introduced for purposes of delay, and

It further appearing to the Court that the property of the Central Altagracia, Incorporated, is as follows:—

143 1. That certain lease of the sugar factory known as "Central Altagracia" situate, lying and being near the city of Mayaguez, Island of Porto Rico, together with certain machinery for the manufacture of sugar then at that time being in and forming part of said factory together also with twenty-two cuerdas (22) of land upon which the said factory is built and which pertain, and are annexed to and immediately surround the said factory, executed at Paris, France, on or about the 18th day of January, 1905, by Joaquin Sanchez de Larragoiti and in favor of Salvador Castelló of Mayaguez, Porto Rico, and for a term of twenty years from January 18th, 1905.

2. All the machinery, apparatus and utensils used for or in connection with the manufacture of sugar, installed in the Central Altagracia factory by the Central in the Central Altagracia Incorporated, after the assignment of the lease by Salvador Castelló to the said Corporation, forming the manufacturing plant of the said Company.

3. All the rights, claims, appurtenances, contracts for the grinding of cane, scales, railroad tracks and switches, tools, implements, household and office supplies, rights of way, easements, mules, horses, tug boats, barges and all others personal or real property belonging to the Central Altagracia, Incorporated, and,

It further appearing to the Court that the legal effect of the contracts of October 28th, and November 2, 1907, between the Central Altagracia, Inc., and Ramón Valdés, was to create an equitable mortgage or lien over the said property of the Central Altagracia, Inc., and in favor of the said Ramón Valdés, for the sum of Sixty-five thousand (\$65,000) dollars, together with the interest stipulated

in the said contracts, at the rate of 10% per annum, and that
144 as to the other amounts claimed by the said Ramón Valdés
he is but a general creditor of the Central Altagracia, Inc.,
and

It further appearing to the Court that Nevers & Callaghan acquired

a lien over the said property of the Central Altagracia Inc. by virtue of the execution levied upon the said property on the 29th of May, 1908, and that the said lien is superior to the equitable mortgage or lien of Ramón Valdés, for the reason that Nevers & Callaghan acquired by their judgment and levy of execution prior right in and to said property so levied upon, being the machinery in said factory.

The Court having heretofore appointed one H. H. Scoville as Receiver of the property of the Central Altagracia and one Elton Warner as an Accountant to revise the books and accounts of the Central Altagracia, Inc., and said Receiver and Accountant having heretofore filed their reports herein, and the same having been approved by the Court, showing the present indebtedness of the said corporation to be as follows:

Bills Payable.

Favor Frank S. de Ronde Co. due 7/1/07.....	\$5,000.00
" " " " due 21/1/08.....	7,000.00
" " " " due 4/1/08.....	7,000.00
" " " " due 5/1/08.....	4,488.82
Total	\$23,488.82

Due to Ramón Valdés:

As at July 12, 1907.....	\$35,000.00
Sundry Cash advances and supplies furnished down to July 1, 1908.....	43,031.00
Total	\$78,031.31

Less:

Sundry amounts advanced for cultivation of cane, Hacienda Carmelita.....	4,404.50
Net liability	\$73,626.81

Sundry Creditors:

Baneo de Puerto Rico.....	683.91
Carried forward	\$683.91
145 Amount brought forward.....	\$683.91
Treasurer of Porto Rico, Taxes, 1907-08.....	1,513.73
Deming Apparatus Manufacturing Co.....	1,854.58
Unpaid Wages, Voucher 717.....	10.19
Q. Saavedra, (cane).....	54.37
N. B. K. Pettingill (account salary).....	3,046.21
Am. R. R. Co. of Porto Rico, switches, etc.....	4,829.83
.50	.50
B. S. Cornwell.....	6,704.83
J. M. Ceballos & Co. (loan).....	

F. L. Cornwell.....	178.05
American Colonial Bank.....	3,000.00
E. E. Saldaña.....	34.90
West India Oil Co.....	569.99
Sucesores de Abarea.....	2,503.98
McMurtrie-Gailey Co.....	753.14
Link Belt Company.....	37.20
Robert S. Graham.....	1,006.75
Sugar Apparatus Mfg. Company.....	67.95
C. A. Schieren & Co.....	149.04
A. Lynn & Hijos de Perez Moris.....	16.75

\$27,015.90

Nevers & Callaghan:

Judgment in their favor.....	\$15,878.87
Plus interest at 6% July 30, 1907 to May 16th, 1908, date of judgment.....	756.90
	\$16,635.77
Interest to 8/16/09 at 6%.....	1,247.68
	\$17,833.45
Total	

146 Receivership:

Receiver's Certificates.

No.	Favor.	Issued.	Due.	Amount.	Interest.
1. N. B. K. Pettingill...	8/15/08	5/15/09	\$1,000.00	9%	
2. H. H. Scoville.....	8/15/08	5/15/09	1,000.00	9%	
3. J. M. Turner.....	8/15/08	5/15/09	3,000.00	9%	
4. Ramón Valdés.....	9/23/08	6/23/09	1,000.00	9%	
5. Ramón Valdés.....	10/22/08	7/22/09	1,000.00	9%	
8. Fritze, Lundt & Co. (Certificate given to guarantee sugar deliveries, became due 3/31/1909)			\$2,500.00		
Offset by open account.....			873.97		
				1,626.03	
				\$8,626.03	
Approximate accrued interest.....				760.00	
				\$9,386.03	

Taxes:

Treasury of Porto Rico, Insular taxes for Fiscal Year, July 1, 1908, to June 30, 1909.....	\$2,780.70
Municipal Taxes	150.00
Corporation Licence fee.....	25.00

\$2,955.70

Colonos:

Alfredo Christy	\$750.00
Pedro E. Ramirez.....	84.00
Domingo Torres	239.27
Rafael Pujals	545.94
Antonio Paz	10.00

	\$1,628.36

Sundry Creditors:

Ramón Valdés	\$3.41
Sucesores de Suau.....	309.98
J. Ochoa y Hermano.....	542.10
Sucesores de Abarca.....	618.92
V. Bareltta & Co.....	104.40
Vidal & Co.....	10.80
E. Gonzalez	5.39
West India Oil Company.....	137.90
Sobrinos de Portilla.....	176.90
Heyman & Co.....	58.87
Sucesores de Bianchi.....	7.16
Review Printing Co.....	6.00
Dooley, Smith & Co.....	4.78
A. Bravo & Co.....	124.60
H. V. Grosch	190.64
P. Bellido.....	24.15
W. Falbe	51.56

	\$2,377.56

147. And it further appearing to the Court that the Central Altagracia Incorporated has defaulted in the payment to Ramón Valdés of the two installments of the principal and the interest due, in accordance with the terms of the contracts between the said corporation and the said Ramón Valdés, which contracts have been held to constitute an equitable mortgage or lien in favor of the said Ramón Valdés over the properties of the said corporation above described and, that the said mortgage or lien should be foreclosed and the sale of the said property should be decreed to answer to the terms of the said contracts.

Therefore, it is by the Court ordered, adjudged and decreed that the mortgage lien of the said Ramón Valdés under and by virtue of the said contracts of November 2, 1907, be and it hereby is established and declared on each and all of the properties, leases, rights and contracts hereinbefore described, for the sum of sixty-five thousand dollars (\$65,000.00) with interest at 10% per annum from November 2, 1907.

And it is further ordered by the Court that the said lien be and it hereby is foreclosed and all rights of the said Central Altagracia, Incorporated, in and to all the said properties, rights, leases and con-

tracts composing the Central Altagracia, Incorporated, as a going concern be and the same are hereby ordered sold to satisfy the said lien in favor of Ramón Valdés for the sum of \$65,000 and interest as aforesaid, unless the Central Altagracia, Incorporated, pays to the said Ramón Valdés the said sum of \$65,000 and interest within 30 days from the entry of this decree.

And it is further ordered, that Francisco Fano be, and he hereby is appointed Master to make the said sale and to report his action to this Court for further action herein.

And it is further ordered by the Court that, as hereinbefore set out, the said property be sold in bulk as a going concern, and that 148 the successful bidder at the said sale do pay in, in cash, within five (5) days from the date of the acceptance of his said bid by the Master the sum of \$3,000 in cash to the Registry of this Court, the same to be returned to the said bidder should the report of the sale by the said Master not be approved.

And it is further ordered that Ramón Valdés shall have the right at such a sale to be a bidder on account of his said mortgage lien, to the extent of the said principal sum of \$65,000, plus interest at 10% from November 2, 1907, to the date of the sale.

And it is further ordered and decreed that after the payment of all court and actual costs out of the proceeds of the said sale the claims shall be paid in full in the order following:—

First. All outstanding receiver's certificates, taxes, accounts and other debts of the receivership, which shall include the sum of \$500.00 as overdue wages to Benjamin S. Cornwell.

Second. The claim of Nevers & Callaghan, amounting to \$15,878.87, plus interest at 6% from July 30, 1907, to the date of the sale.

Third. The full amount of the mortgage lien of Ramón Valdés, for \$65,000.00, plus interest at 10% from November 2, 1907, to the date of the sale.

Fourth. All other creditors of the concern as shown in the Receiver's Final Report, such creditors, including Ramón Valdés to be paid pro rata in so far as may be; provided, however, that the said Ramón Valdés shall collect only the amounts actually paid by him for the debts, notes and accounts of the corporation purchased by him at a discount while he was an Officer of the concern, after he has proved to the satisfaction of the Master hereinbefore appointed what amounts he so actually paid.

149 And it is further ordered that the successful bidder at the said sale may pay in as cash on his said bid the Receiver's certificates and obligations outstanding at the time of the sale, provided, however, that the said bidder shall not pay in less than the aforesaid sum of \$3,000.00 in cash to be applied to the payment of Master's fees, compensation of the receiver, stenographer, and other court costs and expenses.

And it is further ordered and decreed that the successful bidder at said sale shall pay in, in cash, at the time the sale is approved by the Court an amount sufficient to pay in full all Receiver's certificates and obligations existing and not represented by the said bidder.

And it is further ordered that in case Ramón Valdés should be the purchaser at the sale, he must, at the time of the said sale, pay the full amount of all the costs and receivership debts, the entire cost of the sale and the debt in full of Nevers & Callaghan into the Registry of this Court.

It is further ordered and decreed that the above described property shall be sold by the Master hereinbefore appointed in bulk and as a going concern, at public sale, at the door of the Court House of the United States District Court, for the District of Porto Rico, in the City of San Juan, Porto Rico, on the 27th day of November, A. D. 1909, at two o'clock in the afternoon.

It is further ordered and decreed that notices of such sale shall be published by the said Master once a week for at least four weeks prior to the date hereinbefore fixed for such sale, in the newspapers known as "El Tiempo" and "El Boletín Mercantil," both published in the City of San Juan and also in the newspaper called "La Voz de la Patria," published in the City of Mayaguez, Porto Rico.

150 And it is further ordered and decreed that upon the approval by the Court of the sale made in pursuance of this decree, the Master shall execute a deed in favor of the purchaser of the said property, and thereupon the said Central Altagracia, Incorporated, shall be forever shut out and debarred from any and all title and equity of redemption in and to the said property.

San Juan, P. R., October 14, A. D. 1909.

(Signed)

B. S. RODEY, *Judge*.

To which action of the Court in thus entering the foregoing decree and order of sale of the property and in declining to hold that he is now the owner of all of the said plant and property subject to the rights of the Larragoiti heirs as set forth in his several bills of complaint, herein, and in holding the Nevers & Callaghan claims superior to his rights, the said Ramón Valdés by one of his solicitors Martin Travieso, Jr., then and there duly objects and excepts.

And further, the Central Altagracia, Incorporated, by its solicitors in like manner duly objects and excepts to the action of the Court in entering said decree and order of sale as aforesaid.

Journal Entry, November 22, 1909.

564. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

565. Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Comes now Martin Travieso, Jr., counsel for Ramón Valdés complainant in No. 564 and respondent in No. 565, and presents a motion for an appeal from the findings and decree of the Court filed under date of September 25, 1909 in the above consolidated causes. The Court orders the same to be filed and directs counsel to notify counsel for the opposite parties regarding the filing of this motion.

Petition for Appeal and Assignment of Errors.

(Filed November 22, 1909.)

Equity. Nos. 564 and 565.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Petition for Appeal and Supersedeas.

To the Honorable Bernard S. Rodey, Judge of the above Court:

Ramón Valdés, complainant and defendant respectively in the above consolidated causes, conceiving himself aggrieved by the decree made and entered by the above named Court in the above entitled cause under date of October 14th, 1909, providing for the sale of the property of Central Altagracia Incorporated and the mode of distribution of the proceeds of said sale, does hereby appeal from the said decree to the Honorable the Supreme Court of the United States,

for the reasons set forth in the assignment of errors filed herewith; and he prays that this his petition for the said appeal may be allowed, and that a transcript of the record, proceedings and papers upon which the said decree and order were made, duly authenticated, may be sent to the Supreme Court of the United States. And the appellant further prays that an order be made fixing the amount of security which the said appellant shall give and furnish upon such appeal, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said appeal by the Supreme Court of the United States.

And your petitioner will ever pray, etc.

MARTIN TRAVIESO, JR.,
Solicitor for Ramón Valdés.

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Equity. Nos. 564 and 565.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Assignment of Errors.

Comes now Ramón Valdés, complainant and respondent, respectively, in the above consolidated causes, and files the following assignment of errors upon which he will rely in the prosecution of his appeal from the decree made by this honorable Court on the 14th day of October, 1909, in the above entitled cause:—

I.

That the District Court of the United States for the District of Porto Rico erred in not finding that Ramón Valdés was and is the absolute owner of the property of the Central Altagracia, Incorporated, by virtue of the contracts executed on the 28th of October and 2nd of November, 1907, respectively, by and between the Central Altagracia Incorporated and the said Ramón Valdés.

II.

That the said Court having found that the transactions between Ramón Valdés and the Central Altagracia Inc. did not amount to fraud in law upon the creditors of the said corporation, committed error in not holding that the said Ramón Valdés had a right and was entitled to the immediate possession of the property of the said Central by virtue and under the express terms of the said contracts of October 28 and November 2, 1907.

III.

That the said Court erred in finding that the transaction between the Central Altagracia Incorporated and Ramón Valdés, notwithstanding the express stipulation of the instruments executed between the parties, was a loan of money for which security was intended to be given, and that the legal effect of the aforesaid contracts of October 28th and November 2nd, 1907, between the Central Altagracia Incorporated and Ramón Valdés, was to create an equitable mortgage or lien over the property of the Central Altagracia Incorporated and in favor of the said Ramón Valdés for the sum of Sixty five thousand dollars (\$65,000), together with the interest stipulated in the said contracts, and that as to the other amounts claimed by the said Ramón Valdés, he is but a general creditor of the corporation.

IV.

That the said Court erred in finding that Nevers & Callaghan acquired a lien and prior rights over the property of the Central Altagracia Incorporated, by virtue of the execution levied upon the property on the 29th of May, 1908, and in holding the said lien to be superior to the equitable mortgage or lien found to exist over the said property and in favor of the said Ramón Valdés.

V.

That the said Court erred in holding that the said contracts of October 28 and November 2, 1907, could not bind or prejudice Nevers & Callaghan because they were not recorded; and it also erred in holding that the said Nevers & Callaghan were third parties within the meaning of the law providing for the registration of deeds of real property.

VI.

That the said Court erred in ordering the sale of the property of the Central Altagracia Incorporated, which is the same claimed by Ramón Valdés to be his absolute property by virtue of the aforesaid contracts.

VII.

That the said Court erred in finding and decreeing that out of the proceeds of the sale the sum of five hundred dollars (\$500.00) be paid to Benjamin C. Cornwell, as overdue wages, and that the same sum be included within the receivership debts as a preferred claim.

VIII.

That the said Court erred in decreeing that out of the proceeds of the said sale the claim of Nevers & Callaghan must be paid in full and before payment of the equitable mortgage or lien found to exist over the property of the Central Altagracia Incorporated and in favor of Ramón Valdés.

IX.

That the said Court erred in holding that the said Ramón Valdés shall collect, as general creditor of the corporation, only the amounts actually paid by him for the debts, notes and accounts of the corporation purchased by him at a discount while he was an officer of the corporation.

X.

That the said Court erred in holding that the said Ramón Valdés, in case he should become the purchaser at the sale must, in addition to the costs and receivership debts, pay in full into the Registry of the Court the claim of Nevers & Callaghan.

XI.

That the said Court erred in overruling the objection of counsel for Ramón Valdés, to the following question asked of witness Frederick L. Cornwell, who acted as representative and officer of the corporation in the execution of the contracts of October 28 and November 2, 1907, between the Central Altagracia Inc. and Ramón Valdés, and which question was objected to upon the ground that the said witness could be allowed to testify against his own act:—

“I will ask you to state to the Court just what the circumstances were, which led up to the execution of these documents?”

And that it was error to allow the said witness to testify against his own act and deed and for the purpose of changing the contents of the written instruments.

XII.

That the said Court erred in overruling the objection of counsel for Ramón Valdés to the following question asked of the aforesaid witness Frederick L. Cornwell, and in allowing the said witness to answer the same.

“What was the actual fact about the execution of that document; was it intended to be an absolute sale?”

Which question was objected to upon the ground that the witness, being a party to the instrument, could not testify against the contents of his own act and deed.

XIII.

That the said Court erred in denying the motion of counsel for Ramón Valdés made after Nevers & Callaghan rested their case to dismiss the cross-bill of the said Nevers & Callaghan, upon the ground that the evidence failed to show that there was fraud, either in fact or in law, to authorize the Court to sustain the said cross-bill, and upon the further ground that there was nothing in and about the facts shown to show that the said Nevers & Callaghan have any lien as against Ramón Valdés.

XIV.

That the said Court erred in overruling the objection of counsel for Ramón Valdés to the admission in evidence of a paper or memorandum (Marked Exhibit "F" for Nevers & Callaghan,) offered for the purpose of changing the contents of the written instruments between Ramón Valdés and Central Altamira Inc.

The objection to the admission of the said memorandum was made upon the grounds that the date of its execution had not been proven and further that there being a deed executed between Ramón Valdés on one side and Central Altamira, on the other, all previous memoranda or agreements were merged into the final written agreement and could not be admitted in evidence.

156 In order that the foregoing assignment of errors may be and appear of record, the appellant Ramón Valdés presents the same to this Court and prays that such disposition be made thereof as in accordance with law and the Statutes of the United States in such cases made and provided.

All of which is respectfully submitted.

MARTIN TRAVIESO, JR.,
Solicitor for Appellant Ramón Valdés.

Journal Entry, November 26, 1909.

564. Equity.

RAMÓN VALDÉS
vs.

CENTRAL ALTAMIRA, INC., and NEVERS & CALLAGHAN.

Consolidated with

565. Equity.

CENTRAL ALTAMIRA, INC.,
vs.
RAMÓN VALDÉS and NEVERS & CALLAGHAN.

The above-entitled consolidated causes which were recently tried together came on this day in open court for a hearing on the application of Ramón Valdés, one of the parties, by his counsel Martin Travieso, Jr., that his said client be granted an appeal to the Honorable the Supreme Court of the United States from the decision and decree herein, with supersedeas, and requests that the Court fix a bond in that behalf, and he then and there files, in addition to said application, an assignment of alleged errors in the premises. Francis H. Dexter appears for his clients Nevers & Callaghan and incidentally in the interest of the Larragoiti heirs who are the owners of the fee to the land upon which the plant is situated. And the Court having heard said respective counsel regarding said application and with reference to the amount at which the bond to stand as a supersedeas should be fixed, and being fully

advised, and in consideration of the fact that the Valdés lien amounts to about \$78,000, and the outstanding receivership debts to about \$18,000, and the Nevers & Callaghan claim to the like amount of about \$18,000,—all this exclusive of costs of all kinds in the cause, states that the appeal will be, and hereby is, granted, upon said applicant filing a good and sufficient bond conditioned as required by law and reading to such party or parties as may be proper, in the sum of one hundred and fifty thousand dollars (\$150,000), and which bond, if it is intended that the application now made shall supersede the sale which is ordered for tomorrow, must be filed and approved in the manner required by law on or before ten o'clock of tomorrow, November 27th instant; provided, that if said applicant desires the appeal without supersedeas, then and in such event he shall only be required to file a bond conditioned as aforesaid in the sum of three hundred dollars, and in the latter case the sale will take place as already ordered. To which action of the Court in thus refusing to grant supersedeas in the premises unless the bond in the large sum aforesaid is filed, the said applicant by his said counsel then and there objects and excepts.

Journal Entry, November 27, 1909.

564. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

565. Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Comes now Martin Travieso, Jr., counsel for the complainant in cause No. 564 and respondent and cross-complainant in cause No. 565, and presents a cost-bond on appeal in the above-entitled 158 consolidated causes in the sum of Three hundred Dollars, the same being in accordance with the Court's order herein under date of November the 26th instant, and the said cost-bond is duly approved by the Court and ordered to be filed, and the appeal is therefore considered as perfected.

Appeal Bond for Costs.

(Filed November 27, 1909.)

Equity. Nos. 564 and 565.

RAMÓN VALDÉS
vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

CENTRAL ALTAGRACIA, INC.,
vs.
RAMÓN VALDÉS and NEVERS & CALLAGHAN.*Bond on Appeal to Supreme Court.*

Know all men by these presents, That we, Ramón Valdés, as principal and Eudosio Cuetara and M. Mendiá as sureties, are held and firmly bound unto Central Altagracia Incorporated and the firm of Nevers & Callaghan, of New York, in the full and just sum of Three Hundred (\$300.00/100) dollars to be paid to the said Central Altagracia Incorporated and Nevers & Callaghan or to his attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of November, in the year of our Lord one thousand nine hundred and nine.

Whereas, lately at the District Court for the 14th day of October 1909, in a suit pending in said District Court of the United States for Porto Rico, between the above named parties a decree was rendered against the said Ramon Valdés, and the said Ramón Valdés having obtained an appeal to reverse the decree so entered in the aforesaid suit, and a citation issued to Central Altagracia Incorporated and Nevers & Callaghan citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden in the City of Washington on the — day of — next.

Now, the condition of the *condition of the* above obligation is such that if the said Ramón Valdés shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; otherwise to be and remain in full force and virtue.

(Signed)
" " "R. VALDES.
EUDOSIO CUETARA.
M. MENDIA.[SEAL.]
[SEAL.]
[SEAL.]

Sealed and delivered — the presence of

A. M. BACON.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

I, Eudosio Cuétara, resident of Porto Rico, do solemnly swear, that after paying my just debts and liabilities I am worth \$1000.00 in real estate within the jurisdiction of this Court, and subject to execution, levy and sale.

(Signed)

EUSEBIO CUÉTARA.

Sworn to and subscribed before me this 27th day of November, 1909.

[Seal of the U. S. Dist. Court for Porto Rico.]

(Signed)

JOHN L. GAY,

Clerk United States D. C. for P. R.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

I, M. Mendiá, resident of Porto Rico, do solemnly swear that after paying my just debts and liabilities I am worth \$1000.00 in real estate within the jurisdiction of this Court, subject to execution, levy and sale.

(Signed)

M. MENDIA.

Sworn and subscribed before me this 27 day of November, 1909.

[Seal of the U. S. Dist. Court for Porto Rico.]

(Signed)

JOHN L. GAY,

Clerk U. S. District Court for Porto Rico.

Approved this 27 day of November, 1909, at 1. P. M.

(Signed) B. S. RODEY, Judge.

(Filed December 13, 1909.)

564 and 565 Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

CENTRAL ALTAGRACIA, INC.,

vs.

R. VALDÉS and NEVERS & CALLAGHAN.

To the Clerk of the above Court:—

You will please prepare a transcript of the record in the above consolidated causes, to be filed in the office of the Clerk of the Supreme

Court of the United States, under the appeal heretofore allowed to said Court, and include in said transcript of record the following pleadings, proceedings and papers on file, to wit:

Original Bill of complaint, No. 564 June 2, 1908.
 Demurrer of Central Altagracia, " 564 June 2, 1908.
 Journal entry page 424, " 564 June 2, 1908.
 Bill of Complaint, " 565 June 2, 1908.
 Journal entry page 424, " 565.
 Journal entry page 451, " July 20, 1908.
 Court's views " July 20, 1908.
 Order appointing permanent receiver, July 22, 1908.
 Appearance and demurrer of Nevers & Callaghan, 565 July 23, 1908.
 Journal entry (Mayaguez) double caption, July 21st, 1909.
 Journal entry (Mayaguez) " " July 24, 1909.
 Journal entry (Mayaguez) " " July 27, 1909.
 Journal entry (Mayaguez) " " July 28, 1909.
 Amended demurrer of Nevers & Callaghan, July 17, 1909.
 Court's memorandum, July 21, 1909.
 161 Amended bill of complaint, July 22, 1909.
 Answer of Central Altagracia and Exhibits "A" and "B," July 24, 1909.
 Motion of Nevers & Callaghan to be made parties defendant, July 26, 1909.
 Answer and cross bill of Nevers & C. (565) July 26, 1909.
 Answer and cross-bill of R. Valdés, July 27, 1909.
 Answer and cross-bill of Nevers & Callaghan to cross-bill of R. Valdés, July 27, 1909.
 Replication of R. Valdés to Answer of Nevers & Callaghan, July 28, 1909.
 Answer of Ramón Valdés to cross-bill of Nevers & Callaghan, July 28, 1909.
 Replication of Ramón Valdés to the answer of Central Altagracia, July 28, 1909.
 Findings of facts and law and opinion on the merits, filed September 25, 1909.
 Order appointing Francisco Fano, Special Master in Chancery, October 9, 1909.
 Final decree of foreclosure and sale, October 14, 1909.
 All entries relating to this appeal made in Journal after the final decree was made and entered.
 Petition for appeal filed on behalf of Ramón Valdés, November 22, 1909.
 Assignment of Errors filed on behalf of Ramón Valdés, November 22, 1909.
 Order allowing appeal, made November 26, 1909.
 Copy of Praecept.
 Said transcript to be prepared in chronological order and as required by law and by the rules of this Court and of the Supreme Court of the United States, for filing in the office of the Clerk of the Honorable Supreme Court of the United States.

Very respectfully,

MARTIN TRAVIESO,
Solicitor for Ramón Valdés.

162 In the District Court of the United States for Porto Rico.

No. 564. In Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

No. 565. In Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

R. VALDÉS and NEVERS & CALLAGHAN.

I, John L. Gay, Clerk of the District Court of the United States in and for the District of Porto Rico, do hereby certify the foregoing one hundred and sixty-one pages, numbered from 1 to 161 inclusive, to be a true and correct copy of the record and proceedings in the above and therein entitled causes as the same remains of record and on file in the office of the Clerk of said Court and as called for by the Praeipe.

In testimony Whereof I have hereunto set my hand and affixed the seal of said Court this eighth day of January, 1910.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,

Clerk of the District Court of the United States for Porto Rico.

Endorsed on cover: File No. 21,984. Porto Rico D. C. U. S. Term No. 193. Ramon Valdes, appellant, vs. Central Altagracia, Incorporated, and Nevers & Callaghan. Filed January 28th, 1910. File No. 21,984.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 196.

CENTRAL ALTAGRACIA, INCORPORATED, APPELLANT,

vs.

RAMON VALDES, AND GEORGE C. NEVERS, GEORGE R. ACKERSON, AND JAMES G. CALLAGHAN, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME OF NEVERS AND CALLAGHAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
PORTO RICO.

FILED JANUARY 31, 1910.

(21,994.)



(21,994.)

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1911.

No. 196.

CENTRAL ALTAGRACIA, INCORPORATED, APPELLANT,
vs.

RAMON VALDES, AND GEORGE C. NEVERS, GEORGE B.
ACKERSON, AND JAMES G. CALLAGHAN, COPARTNERS,
DOING BUSINESS UNDER THE FIRM NAME OF NEVERS
AND CALLAGHAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
PORTO RICO.

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1 In the District Court of the United States for Porto Rico,
Sitting at San Juan.

RAMON VALDEZ
vs.
CENTRAL ALTAGRACIA, Incorporated.

Petition for Receivership.

To the Hon. Bernard S. Roley, Judge of the District Court of the
United States for Porto Rico:

Ramon Valdez, a subject of the King of Spain, and a resident of
Porto Rico, respectfully brings this, his Bill of Complaint against
the Central Altagracia, Incorporated, a corporation organized and
existing under and by virtue of the laws of the State of Maine,
U. S. A., and says:

I.

That your orator now is, and during all of the time hereinafter
mentioned was, a subject of the King of Spain and a resident of the
Island of Porto Rico.

II.

That the Defendant now is, and during all of the times herein-
after mentioned was, a corporation duly organized and existing under
and by virtue of the laws of the State of Maine, U. S. A., and doing
business in Porto Rico.

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III.

That heretofore, to wit, on or about the 2nd day of November,
1907, your orator and the said Defendant entered into a contract of
conditional sale at the City of New York, State of New York, U. S.
A., by virtue of which contract your orator conditionally sold, as-
signed and transferred to the said Defendant:

(1) All of his right, title and interest in and to a certain lease of
certain premises, more particularly described as follows, to wit:

That certain lease of the sugar-factory known as the "Central Al-
tagracia," situate, lying and being near the City of Mayaguez, in
the Jurisdiction of Mayaguez, Island of Porto Rico, together with
certain machinery for the manufacture of sugar then, at that time,
being in and forming part of said factory, together also with Twenty-
Two (22) cuerdas of land upon which the said factory is built and
which pertain, and are next to and immediately surrounding the
said factory, executed at Paris, France, on or about the 18th day of
January, 1905, by Joaquin Sanchez de Larragoiti and in favor of
Salvador Castelló, of Mayaguez, Porto Rico.

(2) All of his right, title and interest in and to certain machinery
for the manufacture of sugar at the date of the said contract belong-

ing to and being the property of said Plaintiff, and being in the said factory, and which had been placed therein by the said Defendant. A copy of which said contract, together with its correct translation into the English Language is hereto annexed, marked Exhibit "A," and prayed to be considered and taken as part of this Bill.

IV.

That, however, it was expressly provided in and by the terms of the aforesaid contract of conditional sale of November 2, 1897, that 3 the title in and to the aforesaid lease and machinery should not pass and be conveyed and transferred to the said Defendant, but should belong to and remain in your orator until the said Defendant had fully complied with and performed certain conditions upon it imposed by the said contract. That among the said conditions was the payment of the full amount of the purchase-price of the said lease and the said machinery, and which amount was the sum of \$65,000.00, payable in four (4) equal instalments, due, respectively, on the first day of April of each of the years of 1908, 1909, 1910 and 1911, together with interest at the rate of Ten (10) per cent per annum, on all deferred payments, and which interest was payable every six (6) months, and to be compounded at such times if not paid.

V.

That it was further provided by the terms of the aforesaid contract that should the Defendant be unable to pay any of the aforesaid instalments when due the said Plaintiff would be obliged to extend the time for the payment of the said instalment for the further term of one year; provided, however, that the interest due on account of the total sum then owing by the Defendant, as aforesaid, should be or was paid.

VI.

That it was further provided by the terms of the aforesaid contract that should the Defendant fail to keep and observe any of the conditions by it to be kept and observed according to the terms of the said contract, and especially should the said Defendant make default of the payment of interest when due, or any of said instalments when due, then the said Plaintiff would immediately and *ipso facto* be entitled to re-enter into and take possession of the said factory, and the said premises, and the said machinery, and the said contract of lease, as the true, lawful and exclusive owner of the same.

4

VII.

That by virtue of the said contract of November 2, 1907, the said Defendant went into possession of the said premises and factory, and took possession of the said machinery and said contract of lease, and still continues to occupy and hold the same.

VIII.

That according to the terms of the said contract there became due on the first day of April, 1908, the first of the instalments above mentioned, amounting to \$16,250.00, together also with the interest aforesaid on the total sum of \$65,000.00 from the date of the aforesaid contract; but that the Defendant has failed to pay all, or any part, of said instalment, or of said interest.

IX.

That by the terms of the said contract the Plaintiff is entitled to the immediate possession of the said premises, factory, machinery and lease, but that the said Defendant continues in possession of the same without the permission, and against the will, of your orator, and refuses to deliver to him possession of the said premises, factory, machinery and lease after default in the payment of the interest and first instalment, as aforesaid.

X.

That your orator on the date of the contract aforesaid was, and now is, the sole and exclusive owner of the said lease and the machinery mentioned in said contract and is now entitled to the possession of the premises, factory, machinery and lease aforesaid.

5

XI.

That heretofore, to wit, on the 2nd day of June, 1908, your orator demanded of the said Defendant the possession of the said factory, premises, machinery and lease, but that the said Defendant refused to deliver the same to your orator.

XII.

That heretofore, to wit, on the 2nd day of June, 1908 your orator filed, on the law side of this Court, his certain suit against the said Defendant for the possession of the said premises, factory, machinery and lease, a copy of which complaint is hereto annexed, marked Exhibit "B," and hereby made a part of this Bill.

XIII.

That the said factory and the said machinery is of great value, to wit, not less than the sum of \$65,000.00, and is dedicated to the purpose of manufacturing sugar from cane. That the season for the grinding of cane and the manufacturing of sugar in Porto Rico usually commences about the month of December, of each year, and terminates in the months of May, June, or July, of the year following, according to the amount of cane to be ground. That there are no lands annexed to, or which pertain to, the said factory which can supply the same with any appreciable quantity of cane for the purpose of grinding, so that it is absolutely necessary in order that the said factory may grind any cane and manufacture sugar for the

owner of the said factory and machinery to make contracts with the people (colonos) growing cane in and about that vicinity, so that said growers of cane will deliver the same to the said Central Altagracia to be ground, and that said contracts are usually made and entered into in the months of June, July and August. That any delay in the making of said contracts for the delivery of cane, as aforesaid, endangers the business of the said factory and renders the 6 owner of the same liable to the loss of the said contracts and the consequent failure of securing cane for grinding during the following season, thus obliging the said factory and the said machinery to remain idle and entailing the loss of thousands of dollars to the owner of the same.

XIV.

And your orator further alleges that the said Defendant is indebted to various persons in large sums of money, to wit: in a sum in excess of \$60,000.00 and is unable to pay the same or meet its obligations, and is insolvent.

XV.

That on the 13th day of May, 1908, judgment was rendered by this honorable Court against the said Defendant and in favor of the firm of Nevers & Callaghan for a large sum of money to wit about \$17,000.00 then due and owing to the said firm. That thereafter the execution was issued on the aforesaid judgment and a levy was made by the Marshal of this Court, in pursuance of said writ, on the aforesaid factory and machinery on the — day of May, 1908, and that the said Marshal now threatens to sell the said factory and machinery in satisfaction of the said judgment.

XVI.

And your orator further alleges that unless a Receiver be appointed pending the decision of the aforesaid suit at law, to take charge of and preserve the said factory and machinery, and with the powers hereinafter mentioned, the said factory and machinery will greatly deteriorate in value and the owner of the same will suffer great loss and be unable to secure the contracts for the delivery of the same, as above stated.

In consideration whereof, and for as much as your orator 7 is remediless in the premises, at and by the strict rule of the common law, and is only relieviable in a court of equity, where matters of this sort are properly cognizable and relieviable, etc.

To the end, therefore, that your orator may have that relief which he can only obtain in a court of equity, and that the said Defendant may answer in the premises, but not upon oath or affirmation, the benefit whereof is hereby expressly waived by your orator, he now prays the Court:

May it please Your Honor to grant unto your orator a writ of Sub-peña, directed to the said Defendant-Corporation and to be served

upon its representative in Porto Rico, Frederick L. Cornwell, thereby commanding the said corporation, and under a certain penalty therein to be limited, to appear before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand — perform and abide such order, direction and decree as may be made against it in the premises, as shall seem meet and agreeable to equity.

That a Receiver be appointed to take charge of the premises, factory and machinery of the Central Altamaria above described, and to manage the same under the orders of this Court pending the decision of the aforesaid suit at law.

That the said Receiver be authorized by proper order of this Honorable Court to enter into and make contracts with suitable parties for the delivery of cane to be ground at the said sugar-factory, to wit, Central Altamaria, and to advance such sums of money on said contracts as is usual and proper in such cases; and, further, that the said Receiver be authorized for this purpose, and for the preservation of the said machinery and factory, to issue proper Receiver's certificates of indebtedness up to the amount of \$—, and which indebtedness represented by the said certificates shall be and constitute a first and prior lien upon the said factory and machinery.

And that your orator may have such other relief in the premises as the nature and circumstances of the case may require.

(Signed)

T. D. MOTT, Jr.,
Solicitor for Complainant.

San Juan, Porto Rico, June 2, 1908.

UNITED STATES OF AMERICA.

District of Porto Rico, ss:

Ramon Valdes, being first duly sworn, deposes and says: that he is the Complainant mentioned in the foregoing bill; that he has read the same and knows the contents thereof, and that the facts therein alleged are true of his own knowledge.

(Signed)

R. VALDES.

Subscribed and sworn to before me this 2nd day of June, 1908.

(Signed)

JOHN L. GAY, Clerk,
By C. A. DAVIDSON, Deputy.

No. 564. In Equity.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, INC.

Comes now T. D. Mott, Jr., solicitor for the complainant Ramón Valdes, and files a petition for the appointment of a Receiver for

the defendant corporation. The court hears counsel for both sides in the matter, and a further hearing of the same is continued over until tomorrow, June 3d.

10

Demurrer of Defendant.

(Filed June 2, 1908.)

RAMON VALDES, Complainant,

vs.

CENTRAL ALTAGRACIA, Defendant.

Demurrer of Central Altagracia, Defendant, to the Bill of Complaint of Ramón Valdés, Complainant.

I.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged doth demur thereto, and for cause of demurrer showeth that the said complainant hath not, in and by said bill, made or stated such a cause as doth or ought to entitle him to any such relief as is thereby sought and prayed for from or against this defendant: Wherefore this defendant demands the judgment of this Honorable Court whether he shall be compelled to make any further or other answer to the said bill of complaint or any of the matters or things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

(Signed)

FREDERICK L. CORNWELL,
Sol. for Defendant.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

FREDERICK L. CORNWELL,
Solictor for Dft.

ISLAND OF PORTO RICO,
City of San Juan:

11 Frederick L. Cornwell, being duly sworn deposes and say that he is Vice-President of Central Altagracia, defendant herein, and that the foregoing demurrer is not interposed for delay.

FREDERICK L. CORNWELL.

Sworn to before me this 2nd day of June 1908.

JOHN L. GAY, *Clerk.*

12 To the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, in Chancery Sitting:

Central Altagracia, Incorporated, a corporation duly organized and existing under the laws of the State of Maine and a citizen

said State, brings this its bill of complaint against Ramon Valdes, who is a subject of the King of Spain residing in Porto Rico, and George C. Nevers, George B. Ackerson and James G. Callaghan, as copartners doing business under the firm name of Nevers & Callaghan, who are each and all citizens and residents of the city and State of New York.

And thereupon your orator, complaining, says that, while it is, as above alleged, organized and exists under the laws of the State of Maine, its principal and only business is the running of factory for the grinding of sugar cane and production of sugar therefrom, situated in the Añaseo valley, near the city of Mayaguez, Porto Rico; and that it is duly authorized and licensed to carry on business within this jurisdiction by the Territorial Government called the "People of Porto Rico."

Your orator further alleges that during or about the month of March, A. D. 1907, finding itself in need of additional ready money to meet its maturing obligations, it negotiated a loan from the defendant Ramon Valdes, through its proper officers, for the sum of \$35,000.00 which it agreed to repay to said Valdes on or before the 1st day of April, 1908, with interest at the rate of 10% per annum, and as an additional consideration for the making of the said loan it was agreed by the managing officers of your orator that said Valdes should be chosen a Director and Vice President thereof at a salary of \$3,000.00 per year, which agreement was carried out.

Your orator further alleges that during or about the month of June, 1907, the same being at the end of the grinding season for that year, the Directors of your orator, after taking the advice of

13 expert engineers, determined that it was necessary for the welfare of the Company to raise an additional loan of

\$30,000.00 for the purpose of repairing and re-arranging the machinery already in its factory and purchasing additional machinery, and the President and Treasurer of your orator went to New York City for the purpose of negotiating a loan of sufficient amount to cover the above needs and also to pay off certain indebtedness then existing including the debt of said defendants Nevers & Callaghan, which has since been reduced to judgment as will hereinafter more fully appear; that during their *during their sojourn* in New York for the purpose aforesaid said President and Treasurer entered into further negotiations with said defendant Valdes, then Vice President of your orator as aforesaid, in consequence of which a preliminary agreement was arrived at whereby defendant Valdes was to advance to your orator the funds necessary to purchase the needed machinery and, if said officers of your orator offered to return said advances with certain commissions and interest before the 15th day September, 1907, said Valdes was to accept the same and, in case of the failure so to return said advances, the same and such other advances as might be agreed upon thereafter were to be regarded as a *refaccion* debt and the proper documents for that purpose were to be executed; that matters between your orator and said defendant Valdes remained in that condition until about the 15th day of October, 1907, at which time said offi-

cers of your orator not having returned the said advances and further negotiations having resulted in an agreement between said defendant Valdes and the holders of a majority of its stock on behalf of your orator that, in consideration of the promise of said defendant to finance the Company, he should be elected a member of the Board of Directors and President of the corporation for a period of four years, or until the indebtedness of your orator to him should be paid off, at a salary of \$3,000.00 per annum, that he should have the right to appoint, subject to the approval of the Board, a Manager under him at a salary of \$2500 per annum, and that he should receive as a bonus for such financing a block of 150 shares of the capital stock of your orator (which was all that was remaining in the treasury), the proper documents were duly executed to carry

14 into effect the arrangement aforesaid, the said stock was transferred without further consideration, and said defendant

Valdes was elected President, he already being a member of the Board of Directors of your orator, and the former President, F. L. Cornwell, Esq., was elected Vice-President.

Your orator further alleges that, after said defendant Valdes became President of your orator in the manner aforesaid, he proceeded to control and manage its business without reference to the wishes, judgment or authority of its Board of Directors, to expend money for all purposes without the knowledge or authority of any member of said board, to change the plans for the reconstruction of the factory without such knowledge or authority, to install an incompetent Chief Engineer in charge of the running of the machinery against the protest of the other members of the Board, and in all respects to manage the business of your orator according to his individual will and caprice. That from the time of the election of said Valdes as President as aforesaid until the present day not one dollar of the funds of the Company has passed through the hands of its Treasurer but every dollar thereof has been collected and disbursed by said Valdes, or by those acting under his direction, so that said Treasurer, in order to avoid responsibility for the usurping acts of said defendant Valdes over which he had no control, was forced to act under a provision of the by-laws of your orator and ask the Board of Directors to allow him to surrender the performance of his duties as Treasurer to said Valdes by way of substitution, and has been ever since ignored in respect to such duties.

Your orator therefore alleges that said defendant Valdes never in fact loaned any amount to your orator beyond the first loan of \$35,000.00 hereinbefore referred to but has expended whatever amount he may have spent in your orator's business, with the exception of the price paid for a portion of the machinery purchased and some of the reconstruction work, without the consent or authority of your orator's Board of Directors and without any part 15 of the same passing through its treasury; and that the total amount claimed to have been expended by said defendant in your orator's business is far in excess of any expenditure authorized or contemplated by said Board of Directors and far more than the financial condition of your orator warranted.

Your orator further alleges that after the making of the preliminary agreement between the officers of your orator and said Valdes in New York and the beginning of the purchase of machinery by him and making of repairs in the factory the said Valdes assumed the active management of the business of your orator, sent his agents to your orator's factory to take charge there and, through said agents spread throughout the community of Mayaguez the report that said defendant had been obliged to take over the property and business of your orator on account of the inexperience, incompetence and extravagance of the President and Treasurer formerly in control of its affairs, that said individuals had been removed and had no further connection with said business, and that said defendant had purchased and was the owner of said factory and machinery and all the property of your orator included in its said plant, the said defendant all the while well knowing that said individuals were still respectively Vice President and Treasurer of your orator and still members of its Board of Directors; all of which acts tended greatly to the injury of your orator in depriving those who would otherwise have dealt with it of all confidence in the stability of its business and tending to cause suspicion of the character and ability of its officials, other than said President.

Your orator further alleges that said defendant, instead of carrying out his said agreement with your orator to advance money to it for the purchase of machinery, proceeded to contract for and purchase machinery in his own name, to have the same shipped to himself individually as consignee, and to erect the same in the factory which he then and since has claimed to be his own and

16 to which he has now brought a suit at law in this court to establish his title, yet he has at all times claimed and still claims that your orator is indebted to him for the price of said machinery. That said defendant also proceeded to procure and enter into contracts for the grinding of sugar cane in his own name, instead of in the name of your orator, and in some instances the cane so bought has been entered in the books of your orator as purchased at a higher price than that named in the individual contract with said defendant; all which was in direct violation of his duty to your orator as its President and managing officer and to the financial injury of your orator.

Your orator further alleges that said defendant Valdes before the beginning of the grinding season which is just closing was guilty of inexcusable extravagance in the work preparatory to such season and expended large sums in excess of what was reasonably necessary for that purpose; that after the beginning of said grinding the management of orator's factory, under the direction of said defendant as President, has been both extravagant and incompetent; that soon after the season commenced he discharged from orator's employment the only employee competent to manage the sugar-making department, leaving the same in charge of persons wholly inexperienced and without skill in the handling of such machinery of the complicated and up-to-date kind contained in said factory; that he has continued as Chief Engineer during the whole of the

crop a man known to him and demonstrated by his work to be incompetent; that he has so mismanaged the service of cane by the railroad cars that colonos have been unable to cut and haul cane to said cars with any regularity whereby the service of cane to said factory has been irregular causing increased expense in grinding and decreased results in sugar; that in the midst of the grinding season he absented himself from the Island for a period of nearly two months, during which time his Manager left in charge was without authority of discretion in action as well as without funds properly to conduct your orator's business; and that, in

17 short, the extravagance and incompetence of the management of said defendant was such that, notwithstanding the perfect condition of the machinery in said factory, and the unusual high price of sugar during all of said grinding season, the operations of your orator's factory show practically no profit and, considered in connection with the general expenses of your orator for the year, show a positive loss, and the amount of sugar produced only three fourths as much as either of the previous years of your orator's existence.

Your orator further alleges that said defendant Valdes expended several thousands of dollars in the purchase of scales for the weighing of cane and erected the same at various places along the line of the railroad, but said expenditure resulted practically without benefit as only a small amount of cane was purchased at any of said scales on account of the refusal of said defendant on behalf of your orator to pay the competitive rates which other buyers were paying, while on one occasion purchasing outright cane upon which your orator suffered a considerable loss.

Your orator further alleges that said defendant, since occupying the office of President, has purchased for his own account a large amount of the indebtedness owing by your orator at a large discount from the face value thereof, but instead of allowing your orator the benefit of the reduced price at which the same was acquired, and instead of using said money for the advantage of your orator in acquiring cane contracts, of which your orator was in great need, said defendant has demanded and is now demanding of your orator's Board of Directors that entries be authorized in its books of account transferring said indebtedness into the name and favor of said defendant for the amount of its full face value and interest.

Your orator further alleges that in the month of November, 1907, after defendant and his agents had been in full possession and control of the books and accounts of your orator since the preceding August, defendant made an offer of sixty cents on the dollar of the par value of orator's capital stock for a controlling interest therein, but after being in full control and management of all your orator's business during an entire sugar season, although he claims that said season has been a prosperous and successful one, defendant has stated that said stock is worth practically nothing.

Your orator further alleges that on the 16th day of May, 1908, judgment was recovered in this court by the said defendants Nevers

& Callaghan against your orator for the sum of about \$17,000.00 upon which execution has been issued and levied upon the said machinery and factory of your orator, yet said defendant Valdes as President of your orator has done nothing to avoid said execution and levy. That although said defendant has had entire charge and control of the financial operations of your orator since his election as President, and has been charged with the duty as such of providing for means of paying the most pressing indebtedness of your orator, yet he has made no provision for the payment to himself of the interest now due upon the loans claimed to have been made by him to your orator, and is even now bringing a suit in this court to declare a forfeiture of the title of your orator to its said property because of the non-payment of said interest.

Your orator further alleges that there are practically no lands annexed to, or which pertain to, the factory of your orator which can supply the same with cane for the purpose of grinding, so that it is necessary in order that said factory may grind cane and manufacture sugar that your orator should have contracts with the growers of cane for the delivery of the same for grinding, which contracts are usually made in the months of June and the following; that said Valdes has failed to provide contracts for cane to the extent needed by your orator and that further delay in the making of the same will endanger the business of your orator and render it liable for large loss, and that for the obtaining of a sufficient number of such contracts advances of considerable quantities of money to the cane growers will be necessary; and that the value of your
19 orator's said property depends upon its carrying on its said business and continuing as a going concern, and that your orator has a large unsecured indebtedness beside that owing to said defendant Valdes.

Your orator therefore avers that a Receiver should be appointed by and under the authority of this court to take charge and control of the property all and singular of your orator and to carry on its said business for the benefit of its creditors until its debts can be discharged or properly funded so that both creditors and stockholders may be secured.

To the end, therefore, that your orator may have that relief which can only be obtained in a court of equity and that the defendants, Ramon Valdes and George C. Nevers, George B. Ackerson and James G. Callaghan, as copartners as alleged, may answer this bill, but not upon oath, the benefit whereof is hereby expressly waived; that a receiver may be appointed for the purposes hereinbefore alleged and with the usual powers and responsibilities of receivers in such cases; that the defendants and all other persons may be enjoined from interfering with the possession or control of said receiver; and that your orator may have such other and further relief in the premises as equity may require and to your honor may seem meet.

May it please the court to grant unto your Orator a writ etc.

(Signed)

F. L. CORNWELL,
Counsel for Complainant.

UNITED STATES OF AMERICA,
District of Porto Rico:

F. L. Cornwell, being first duly sworn, says that he is Vice President as well as counsel for the complainant Company; that its President, Ramon Valdes, is one of the defendants; that he has read the foregoing bill and knows its contents and the statements therein made are true of his own knowledge.

(Signed)

F. L. CORNWELL.

Sworn to and subscribed before me this 2nd day of June, 1908.

(Signed)

JOHN L. GAY, Clerk.

20

Journal Entry June 2, 1908.

No. 565. In Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS.

Comes now F. L. Cornwell, Esq., solicitor for the complainant herein and prays the Court for the appointment of a Receiver for the Central Altagracia, Incorporated.

The Court hears counsel in the matter, and, not being fully advised in the premises, the further consideration of same is continued over until tomorrow, June 3d.

21

(Filed June 3/08.)

In the District Court of the United States for Porto Rico.

RAMON VALDES Y COBIAN

vs.

CENTRAL ALTAGRACIA, INCORPORATED,

and

CENTRAL ALTAGRACIA, INCORPORATED,

vs.

RAMON VALDES Y COBIAN and NEVERS & CALLAGHAN.

Order.

Application in the two above entitled causes having been made for a Receiver in the premises and argument by counsel for the respective parties, T. D. Mott, Jr., for the plaintiff in the one and F. L. Cornwell, Esq., for the plaintiff in the other, as appears of record, having been duly had and the Court being about to depart for a short trip to the States and being unable to give the matter immediate consideration,

Orders that H. H. Scoville, Esq., be, and he hereby is named and appointed as Temporary Receiver and Custodian without bond of all the assets, property and rights of the said Central Altagracia Incorporated, in said two causes, he to have full custody of the said property, to preserve the same, to obtain lists of the 'colonos' and endeavor to assure them that the Court in about thirty days will take such action as will be beneficial to them all. And he is hereby authorized, in his discretion, to make contracts with cane planters for the delivery and grinding of their cane at the said mill whenever the same can be done without the necessity of the advance of money; and generally manage the concern during said short period. And in that behalf it is ordered that he make no changes in management not absolutely necessary, within said period, save that he may of course let unnecessary workhands and others go in the meantime so as to save expense. And it is understood that he shall finish the making of any molasses into sugar, etc., so far as the same can be done profitably, selling same and using the money in the pay-
22 rolls and otherwise in the said enterprise. And that he will act with perfect fairness between all of the owners, stockholders and parties herein and endeavor to bring about peace and good feeling between the parties, it being understood that the Court in about thirty days will take further action looking to the discharge of said Temporary Receiver and the appointment of a permanent one or the discharge of the Receiver entirely. Provided that nothing in this order shall in any manner affect the rights, if any, which Nevers & Callaghan now have by reason of a levy had upon a portion of said property. The court reserves the right to hereafter fix the compensation of such Temporary Receiver, he to qualify by filing an oath to faithfully perform his duty in the premises.

(Signed)

B. S. RODEY, *Judge.*

6/3/08.

23

Filed July 20/08.

In the United States District Court for Porto Rico.

In Chancery.

CENTRAL ALTAGRACIA, Incorporated,

vs.

RAMON VALDES and NEVERS & CALLAGHAN.

Bill for Receiver and Relief.

Comes now N. B. K. Pettingill, an attorney of this Court, in his own behalf and as solicitor and counsel for William V. Rowe, as assignee for the benefit of creditors of the firm of J. M. Ceballos & Company, the American Colonial Bank, a corporation existing under the laws of West Virginia, and F. L. Cornwell, a resident of Mayaguez, Porto Rico, and represents unto the Court that the said re-

spective parties are creditors of the complainant corporation in the following amounts, respectively:—

William V. Rowe, as Assignee.....	\$6,704.83
with interest from July 1, '07.	
American Colonial Bank.....	3,000.00
with interest from Dec. 22, '07.	
F. L. Cornwell.....	5,185.00
N. B. K. Pettingill.....	6,130.16

of which accounts itemized statements, duly verified, will be filed at such time as the Court may reasonably fix.

Your petitioners further aver that said complainant corporation has no bonded indebtedness and that none of its creditors have liens upon any of its property, or are entitled in any way to preference in payment over other creditors, except certain small amounts due colonos and employees, and except a certain claim of the firm of Nevers & Callaghan, who are defendants in this suit and who have obtained a judgment at law for the same against the complainant, as appears from the records of this Court; but that it is for the interest of all creditors that said complainant corporation continue as a going concern and that it remain in the custody of this Court as prayed in the bill of complaint herein so long as may be necessary to accomplish that purpose.

24 Wherefore petitioners pray that an order be granted
herein, allowing them to become intervenors pro interesse
suo and to be heard, through their counsel, upon all matters arising
in said litigation affecting the welfare of said complainant corpora-
tion and the rights of petitioners as creditors thereof; that the
amount justly and legally due each of your petitioners from said
complainant corporation may be investigated upon proper proofs
and duly adjudicated; and that your petitioners may be accorded
such privileges and granted such rights in said litigation as are
usually accorded to intervenors of like character in courts of equity.

And your petitioners will ever pray,

(Signed) N. B. K. PETTINGILL,
In Propria Persona and as Solicitor for Wm.
V. Rowe, as Assignee, American Colonial
Bank, and F. L. Cornwell.

UNITED STATES OF AMERICA,
District of Porto Rico:

N. B. K. Pettingill, being duly sworn, says that he is the solicitor and counsel as stated in the foregoing petition, that he has read said petition and knows its contents, and that the statements therein made are true to the best of his knowledge and belief.

(Signed) S. B. K. PETTINGILL

Sworn to and subscribed before me this 29th day of July, 1998.

(Signed) JOHN L. GAY,
Clerk U. S. District Ct.

25

Journal Entry, July 20, 1908.

No. 564.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, Inc.

No. 565.

CENTRAL ALTAGRACIA, Inc.,
vs.
RAMÓN VALDÉS.

In these two entitled causes, the Court having in the forepart of June, 1908, immediately previous to the trip of the Judge to the states, appointed H. H. Scoville, Esq., under the prayers of the bills, as Temporary Receiver of the property referred to in each of the bills of complainants, and now the matter of the appointment of a permanent receiver and other matters concerning said estate, having been argued by the respective counsel and considered by the Court, during several days last past, and on consideration thereof:—

The Court now files its views in writing as to the matter of said Receivership, etc., and requires that proper orders be drawn and entered without delay to carry out the views and directions of the Court as therein set forth.

Thereupon F. H. Dexter, representing the Sanchez de Larragoiti estate, which claims to own the fee to the land upon which the Central Altagracia is built, objects to the views and orders of the Court as thus set forth, and to the issuing of any Receiver's Certificates to be a lien upon said property, and given notice of his intention to intervene in the case and oppose the same in behalf of his said client.

Thereupon N. B. K. Pettingill, Esq., files a petition in said causes intervening on behalf of certain creditors, and F. L. Cornwell, Esq., files a petition praying that the receiver to be appointed be authorized to borrow money for the carrying on of the enterprise.

26. Mr. Cornwell further files a petition signed by divers of the stockholders of the said Central Altagracia, praying for the appointment of N. B. K. Pettingill, Esq., as such Receiver in the premises.

In accordance with the views of the Court thus on this day filed as above set out, it is:

Ordered that said two above entitled causes, shall, for the purpose of the Receivership, and for all purposes of actual hearings and trial, be conducted as one suit, and the Clerk will place a notice in the files of each case to that effect. Counsel for the parties may make up the actual issues under the separate titles and numbers, and may introduce their proofs on the issues thus raised,—but the two causes shall be considered as joined for the purposes of the receivership and all hearings and the trial.

(Filed July 20, 1908.)

In the District Court of the United States for Porto Rico.

No. 564. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, Inc.

and

No. 565. Equity.

CENTRAL ALTAGRACIA, Inc.,

vs.

RAMÓN VALDÉS.

Views of the Court as to the Matter of a Receivership under Which Proper Orders Are to be Drawn and Entries to be Made.

The above two entitled causes were filed in the forepart of June, 1908, as the Court was about to take a short trip to the States. At that time not being able to give the attention to the matter which its importance demanded we considered them together as they involved the same property and requested the same relief, and we appointed H. H. Scoville, Esq., as Temporary Receiver and Custodian of the premises and estate in dispute.

Since our return from the States on July 2nd, the matter has been the subject of consultation between the Court and counsel for the respective parties almost daily. After a full discussion of the matter and a full consideration of the rights of the parties and the situation of the property as shown by the above two mentioned suits and by other suits on file in this Court, we have concluded to settle the matter at least for the present as follows:

The two suits, if the same has not been done heretofore, will be consolidated and proceed as one suit. The complainant in each suit will at once file a request to the Court that the Receiver to be appointed be given leave to borrow such sum of money as the Court may deem proper for the preservation and conduct of the said estate and sugar business, the loan to be declared a first lien as against such complainants and all creditors upon all property rights such complainants may have in the premises.

The Court has concluded that it has no inherent right to prevent the writ of error to the Supreme Court of the United

28 States prayed for by the defendant, the Central Altagracia, in suit No. 516, of Nevers & Callaghan against it, and therefore the same is allowed and supersedeas granted. But under the circumstances the bond to stand as a supersedeas will be fixed at the sum of \$16,000 and a proper entry will be made in the suit referred to,

carry out the leave here granted. But if said supersedeas bond is not filed, even then the execution in the premises will be stayed, until the further order of the Court.

The resignation of H. H. Scoville, Esq., as Temporary Receiver, will be accepted and he will be at once appointed permanent Receiver of the estate in question, under the prayers of the bills of complaint. But the Court reserves the right to end this receivership at any time it deems the same best for the interest of the estate. The Receiver will be allowed \$500. for the two months' service he has already performed, and in the future until the further order of the Court, as permanent Receiver he will be allowed a salary of \$300. per month, beginning August the 1st, 1908. He will give a bond either Security Company or personal, in the sum of \$10,000 conditioned as is usual, and take and file a proper oath in the premises.

He will be at once permitted to borrow money and to issue Receiver's certificates or promissory notes therefor, the same to be a first lien on all of the rights of either of the complainants in the above entitled suits, upon the property described in the bills and now owned, claimed or possessed by the Central Altamaria, Inc. or Ramón Valdés and situated upon or appurtenant to the plant on the 22 acres of land, upon which the Central is located, whether such property or rights are claimed by the Central Altamaria or Ramón Valdés. Said certificates or notes shall not be issued, for the present at least, to exceed in all \$10,000, nor at first to exceed the sum of \$6,000 without further leave of Court, the balance to be issued, if required, and the loan shall bear interest as borrowed at as low a rate

as may be obtainable, but in no event to exceed 9% per 29 annum. Such money or any part thereof shall not be borrowed for longer periods than nine months.

The Receiver will with the money received, pay such sum, said to be about \$1,600, as may be found due to colonos for cane already delivered to the mill, and shall further at once pay the Insular taxes due on said estate, said to be something like \$1,400. He will pay himself his salary as here allowed and the advances he has already personally made to the estate. He shall also pay some few small bills including wages, etc. amounting in all to a little over \$500 now due from said estate, for all of which he shall take proper receipt. The balance of said sum first borrowed shall be used for monthly pay-rolls and if found necessary, in advances to colonos or to people who agree to deliver their sugar cane to the Altamaria Mill to be ground,—the Receiver to take the usual best security in that behalf.

The Receiver will at once discharge all unnecessary help during the idle season, of every kind and character, save that he may have, if necessary, one assistant at a salary not to exceed \$60 per month, and said Receiver by himself and with the aid of said assistant must at once use his best endeavors to secure cane-grinding contracts for said Central for the longest time possible and report his success in that behalf to the Court as often as may be. And whenever he finds opportunity to secure any such contracts by the advance of any sum of money which he may not then possess, he will apply to the Court for leave to borrow money for that purpose if within the orig-

inal amount of \$10,000 here authorized. It is understood that the paramount desire of the Court is to preserve said property as a going concern, and that therefore the obtaining of cane-grinding contracts is the matter of first and greatest importance, and the best efforts of the Receiver and all others concerned must be directed to that end. It is understood that said Receiver shall take absolute and general charge of said estate, preserve the plant and machinery as may be proper during this idle season, and employ herdsmen and watchmen as may be absolutely necessary only, so as to keep down expenses of every kind and character.

30. He shall realize and use as may be necessary any funds by the sale or handling of any molasses or any product that may now be on hand. He will in any event file monthly statements with the Court and will as often as may be necessary inform the Court of his success as to the obtaining of cane-grinding contracts with a view to further action by the Court in about the month of November, 1908, as to the commencement of grinding for the new season, or refraining from so doing. It being understood that the Court reserves the right to so cease and refrain notwithstanding its orders appointing the Receiver hereunder.

It being proper in any event, and the Court having the specific promises of the respective parties contending here, of their full aid and support, to the Court and the Receiver in carrying out the interests of this estate, the Court and the Receiver will expect such aid and assistance in all proper ways, but the Receiver will permit no interference by either of the parties as to the actual conduct or management of the estate as against his own views, and will report to the Court as he shall deem the same necessary, any act or thing done by either of the parties that may in his judgment not tend to the welfare of the estate.

All creditors of the estate must file their accounts with said Receiver or the Court as they may deem best, and the same will be allowed or disallowed and ordered paid as may be possible or proper at the proper time during the progress of this litigation. Counsel on the respective sides will at once prepare all orders necessary or proper under this expression of the Court's views, and after agreeing upon the form of the same between themselves, immediately submit the same to the Court for its approval, and should they fail to agree, the Court will, upon application, settle the same. The Receiver, after he qualifies, will mail proper circulars to all creditors and others interested setting out the substance of this action of the Court.

July 20, 1908.
(Signed)

B. S. RODEY, Judge.

(Filed July 22, '08.)

In the United States District Court for Porto Rico. In Chancery.

No. 564.

RAMON VALDES
vs.
CENTRAL ALTAGRACIA, INC.

No. 565.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES and NEVERS & CALLAGHAN.

Order Appointing Permanent Receiver.

Now on this 20th day of July, A. D. 1908, the application for the appointment of a Receiver of all the property of the said Central Altgracia, Incorporated, made at the same time by the complainants respectively in the above entitled suits, comes on finally to be heard; at which hearing are present in open court the respective parties, to wit: Ramon Valdes, represented by his solicitor, Thomas D. Mott, Jr., Esq., the Central Altgracia, Incorporated, represented by its solicitor, F. L. Cornwell, Esq., and Nevers & Callaghan, represented by their solicitor, F. H. Dexter, Esq., and also the intervening creditors, William V. Rowe, as Assignee of the firm of J. M. Ceballos & Company, American Colonial Bank, F. L. Cornwell and N. B. K. Pettingill, all represented by the last named in his own behalf and as solicitor for the others named; and the said application having been heretofore fully investigated and considered by the court at Chambers, and the court being fully advised in the premises; it is, now hereby

Ordered and decreed that the resignation of H. H. Seoville, Esq., heretofore appointed by order of the 3rd day of June, 1908, Temporary Receiver and Custodian of the property of said corporation in these suits, is hereby accepted; that the said H. H. Seoville, Esq., be, and he is hereby, named and appointed as the Permanent Receiver of this court of all and singular the property of whatever kind or nature belonging to the said Central Altgracia, Incorporated, a

corporation existing under the laws of the State of Maine,
32 or to said Ramon Valdes, and commonly known by the name
of Central Altgracia, including all its buildings, machinery,
supplies, furniture, live stock, railroad spurs, sidetracks, switches,
scales and material of every name, nature and description whatsoever;
also all its stocks, promissory notes and other obligations, choses
in action, accounts, rights under contracts of all kinds including the
contract of leasehold under which said corporation acquired the
premises now occupied by it, and all its tolls, income, profits and

assets of every description whatsoever; that said Receiver be, and he hereby is, authorized and directed to take immediate possession of all and singular the property, rights and assets above described or referred to, wherever situated or found, to preserve and care for the same and maintain it in proper condition and repair so that it may safely and advantageously be used, and to run, manage and operate the said factory or plant for the manufacture of sugar, under the orders of the court to be entered, whenever the proper season for such operation shall begin, and to employ such persons as clerks and employees and make such payments and disbursements as may be needful and proper in so doing.

It is hereby further ordered that the said Receiver, within the next 30 days, file with the clerk of this court a proper bond with either personal or corporate security to be approved by the Judge in the penal sum of Ten Thousand Dollars (\$10,000), conditioned for the faithful discharge of his duties and to account for all the property and funds coming into his hands according to the order of this court; and that said Receiver take and file a proper oath for the due performance of his duties in the premises.

Each and every of the officers, directors, agents or employees of said Central Altagracia, Incorporated, each and every of the other parties to the above entitled suits, and all creditors and other persons or corporations, are hereby required and commanded to turn over and deliver to said Receiver, or his duly constituted representative, any and all property, books of account, vouchers, deeds, leases, contracts, bills, notes, accounts, money, stocks or obligations, or other property in his or their hands, or under his or their control, and

33 each and every of such directors, officers, agents, employees, persons or corporations, are hereby required and commanded to obey and conform to such orders as may be given to them from time to time by such Receiver in conducting the operations of said property and in discharging his duty as such Receiver.

And it is hereby further ordered that all officers, agents and servants of said Altagracia Corporation, its creditors, all other parties to said suits and all other persons, be, and the same hereby are, restrained and enjoined during the pendency of this action from interfering with, transferring, selling, or disposing of in any way, any of the property, rights or assets hereby placed in the custody of said Receiver, or from taking possession of or in any way interfering with the same or any part thereof, or from interfering in any manner with the possession or management of any part of said property, rights or assets by said Receiver, or from interfering in any manner to prevent the discharge by him of his duties or the custody and operation of said property and plant under the order of this court. And it is specifically hereby ordered that any further proceedings under the execution issued out of this court in favor of the defendants Nevers & Callaghan against said Central Altagracia, Incorporated, or the issuance of any alias execution therein, be suspended until the further order of this court.

It is hereby further ordered that said Receiver be, and he hereby is, authorized and permitted at once to borrow money and to issue

Receiver's Certificates or promissory notes therefor which shall be a lien prior and superior to all others upon all the right and title of either of the complainants in the above entitled suits in and to all the property, rights and assets in said bills of complaint or in this order described, whether such property, rights and assets are claimed by said Central Altamaria or by said Ramon Valdes; but such lien shall not affect the rights if any of the Sucesión of Sanchez de Larragoiti in the fee or under its contract; that the amount of such Receiver's Certificates or notes to be issued at present shall not exceed Ten Thousand Dollars (\$10,000), of which not more than Six

34 Thousand Dollars (\$6,000) shall be issued without a report of the intended disposition of the same and a further leave of court, the said balance to be issued when and if required after such leave and the question of the issuance of Receiver's Certificates or notes to any larger amount than said Ten Thousand Dollars (\$10,000) to remain open until such an emergency may arise and the court authorizes the same; that the Receiver's Certificates or notes so to be issued shall bear interest from the time each loan may be made at as low a rate as may be obtainable but in no event to exceed 9% per annum; and that such loans shall not be negotiated for longer periods than nine months.

It is hereby further ordered that, out of the money so borrowed as aforesaid, said Receiver pay to the colonos of said Central Altamaria such sums as may be found due any of them for cane delivered to its factory for grinding during the past season, to the Insular Government such amount as may be due it for taxes upon the said property in his hands, to himself the salary due him as Temporary Receiver and Custodian under the previous order of this court aforesaid, which is hereby fixed and allowed at the sum of Five Hundred Dollars (\$500.) and to such employees of the Altamaria corporation during the past season as remain unpaid in whole or in part the amounts which may respectively remain so due and unpaid according to the books and records of said corporation; and that the balance of the said sum first to be borrowed shall be used for monthly pay-rolls and, if found necessary, in advances to colonos making new contracts for the grinding of their cane, for which the Receiver shall take the usual best security in that behalf.

It is further hereby ordered that said Receiver shall at once discharge all unnecessary salaried officers, employees and help for the remainder of the idle season; provided that he may retain, if necessary, one assistant at a salary not to exceed Sixty Dollars (60); that said Receiver shall, by himself and with the aid of said assistant (if one is retained) use his best and urgent endeavors to secure cane-grinding contracts on behalf of said Altamaria corporation in as large quantity and for as long terms as possible and report his proceedings in that regard and the results thereof to the court at convenient intervals, but at least monthly; and that, whenever said

35 Receiver finds opportunity to secure any such contracts by making advances of money to the prospective colonos upon proper security to an amount beyond what said Receiver may at such time be authorized to borrow or have on hand to be devoted

to such objects, said Receiver may apply to the court for further authority in the premises, and all such applications will be considered and passed upon in the light of conditions as they then exist, the paramount desire of the court being to preserve said property as a going concern for the greatest ultimate benefit of creditors and stockholders and to that end the best efforts of said Receiver and all concerned must be directed to the securing of cane-grinding contracts as the matter of primary importance.

It is hereby further ordered that said Receiver collect such accounts owing to said Altagracia corporation as he may be able and also realize such money as possible by the sale or handling of any molasses or other product that may now remain on hand; that he shall file monthly reports with the court, including itemized accounts of his receipts and disbursements, which accounts as well as those filed or to be filed with reference to his Temporary Receivership shall be subject to exception by the parties and review by the court; and that said Receiver shall permit no interference by any of the parties contrary to his own views as to the actual conduct or management of the estate in his hands, and shall report to the court any act or thing done by any of such parties or their representatives that may in his judgment not tend to the welfare of the same. The salary of said Receiver shall be the sum of Three Hundred Dollars (\$300) per month, beginning from the first day of August, 1908.

Said Receiver is hereby fully authorized and empowered to institute and prosecute such suits as may be necessary in his judgment for the proper protection of the property and trusts hereby vested in him, and to likewise defend all such actions instituted against him as such Receiver, and also to come in and take the prosecution or defense of any of the suits now pending in which Central Altagracia is a party, the present attorneys of said corporation being hereby directed to proceed with said pending litigation under the direction of said Receiver.

36 It is hereby further ordered that all creditors of said Central Altagracia, Incorporated, and all persons claiming any lien or other right against any of the property coming into the custody and control of the Receiver of this court herein, must file their accounts either with said Receiver or with this court, as they may be advised, and said Receiver shall give notice to all such creditors and claimants shown by the books of said corporation of this provision of this order and of the substance of the action now taken by the court. All such claims will be hereafter duly heard and considered by the court, and allowed or disallowed with such effect upon the property in said Receiver's hands as may be in accordance with law and equity.

And, lastly, it is hereby ordered that, in consideration of the controversies which the court can see are possible to arise between the conflicting interests represented in this litigation and of the importance to the conservation of said property to postpone such controversies for the present, any delay on the part of any of the parties hereto or of the stockholders of said Central Altagracia in asserting by suit supposed rights or liabilities as between themselves or against

one another, during the pendency of this Receivership, shall not be considered or held to be equivalent to or in the nature of laches in the assertion of such rights or the claim of such liability.

All matters of whatever nature not included in or covered by the terms of this order are hereby reserved for the further order of the court.

Done and ordered in open court at San Juan, this 22nd day of July, A. D. 1908.

(Signed)

B. S. RODEY, *Judge.*

37 In the District Court of the United States for Porto Rico,
Sitting at San Juan.

Equity. No. 564.

RAMON VALDES

vs.

CENTRAL ALTAGRACIA, Incorporated,

and

Equity No. 565.

CENTRAL ALTAGRACIA, Incorporated,

vs.

RAMON VALDES and NEVERS & CALLAGHAN.

Consolidated.

Appearance of Nevers & Callaghan to the Suit Instituted by Central Altagracia, Incorporated, and Their Demur to its Bill of Complaint.

Never & Callaghan, Defendants above-named, a co-partnership composed of George C. Nevers and James G. Callaghan, by and through their undersigned Solicitor, Francis H. Dexter, enter their appearance to the above-entitled suit instituted by the Central Altagracia, Incorporated, against them and Ramón Valdés and they hereby demur to the Bill of Complaint filed herein by the said Central Altagracia, Incorporated, for the reason that it sets forth no cause of action against these Defendants, nor prays any relief as against them, but said Bill of Complaint as to these Defendants is frivolous and without merit.

Wherefore, they pray that the said Bill of Complaint be dismissed as to them and that they be discharged with their costs.

San Juan, Porto Rico, July 23, 1908.

(Signed) NEVERS & CALLAGHAN,
By their Solicitor, F. H. DEXTER.

Service of copy of foregoing accepted this — day of July, 1908.

Attorney for Central Altagracia, Inc.

Journal Entry, July 27, 1908.

In Equity. No. 564.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, Inc.,

and

In Equity. No. 565.

CENTRAL ALTAGRACIA, Inc.,
vs.
RAMÓN VALDÉS.

A stipulation is filed by which the parties agree that there shall not be further proceedings in the two above-entitled causes until after the first day of October next, and not then unless the solicitors for both parties are in Porto Rico.

Stipulation.

(Filed July 27, 1908.)

Equity. No. 565.

CENTRAL ALTAGRACIA
vs.
RAMON VALDES et al.

and

Equity. No. 564.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA.

The parties hereto, by their respective attorneys, stipulate and agree that this cause shall not be proceeded with until after the first day of October, 1908, and not then unless the attorneys for both parties should be in Porto Rico.

San Juan, Porto Rico, July 27, 1908.

T. D. MOTT, JR.,
Solicitor for Valdes.

F. L. CORNWELL,
Solicitor for Altgracia.

By N. B. K. PETTINGILL,
N. B. K. PETTINGILL,
Sol. for Creditors.

40 On Monday the 12th day of July 1909, among the proceedings had were the following, to-wit:

The Altamacia cases.

In suit #516—San Juan div., Nevers and Callaghan vs. Central Altamacia—#563 Ramón Valdes vs. same—#564 Same vs. same, Equity No. 565 Central Altamacia vs. Ramón Valdés—#579 Succession of Sanchez de Larragoiti against Central Altamacia, et al.; the Court in accordance with notice previously given holds an evening session with a view to determining what shall be done with reference to the Central Altamacia property which is in question in all of these suits. Mr. F. H. Dexter, on behalf of the Sanchez de Larragoiti succession, accompanied by Mr. Maurier, an Attorney from Paris, France, representing said succession, being present, as well as F. L. Cornwell, N. B. K. Pettingill, Martin Travieso, José de Diego, Leopoldo Feliu, Chase Ulman, all of whom represent parties to some phase of the litigation regarding said property, when a conference is held between said counsel and the Court, and it is determined to proceed with the argument of the demurrer in cause No. 563 on Saturday next at noon and dispose of the same when the Court will take up the other matters in such order as it may deem best. And thereupon F. H. Dexter on behalf of his clients

Messrs. Nevers and Callaghan filed objections and protest to
41 the further continuance of the Receivership in the consolidated causes 564 and 565 aforesaid. In answer to which the Court states that it had some time since determined to either modify or end the receivership in said consolidated causes and the motion embodied in said objections and protest for dismissal of the cause is therefore by the Court then and there denied.

On Saturday the 17th day of July 1909, among the proceedings had were the following, to-wit:

The Altamacia Cases.

The Court and Counsel consult together regarding the proper course to pursue in regard to the issues in these cases, in order that the Court may be able to get the matter properly before it. At the end of the consultation the Court announces that it will make a Statement as to its determination on Monday next.

42

Amended Demurrer of Nevers & Callaghan.

(Filed July 17, 1909.)

Equity. No. 564.

RAMON VALDES

vs.

CENTRAL ALTAGRACIA, Incorporated,

and

Equity. No. 565.

CENTRAL ALTAGRACIA, Incorporated.

vs.

RAMON VALDES and NEVERS & CALLAGHAN.

Consolidated.

Nevers & Callaghan, defendants above-named, a copartnership composed of George C. Nevers and James G. Callaghan, by and through their undersigned solicitor Francis H. Dexter, enter their appearance to the above entitled suit instituted by the Central Altagracia, Incorporated, against them and Ramon Valdes and they hereby demur to the bill of complaint filed herein by the said Central Altagracia, Incorporated, for the reason that it sets forth no cause of action or subject of equitable jurisdiction to justify the Court in granting relief as prayed or otherwise.

Wherefore, they pray that the said bill of complaint be dismissed and that they be discharged with their costs.

Mayaguez, Porto Rico, July 12, 1909.

NEVERS & CALLAGHAN,

(Signed) By Their Solicitor, F. H. DEXTER.

43

On Wednesday the 21st day of July 1909, among the proceedings had were the following to-wit:

Law, 579, San Juan.

ANTONIO J. L. SANCHEZ DE LARRAGOITI et al., Composing the Succession or Estate of Joaquin Sanchez de Larragoiti, Deceased,

vs.

SALVADOR CASTELLÓ, CENTRAL ALTAGRACIA, et al.

Equity, 203, Mayaguez.

SALVADOR CASTELLÓ et al.

vs.

CENTRAL ALTAGRACIA, Inc., and **H. H. SCOVILLE**, Receiver.

Law, 516, San Juan.

NEVERS & CALLAGHAN

vs.

CENTRAL ALTAGRACIA.

44

Law, 563, San Juan.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, Inc.

Equity, 564, San Juan.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, Inc.

and

Equity, 565, San Juan.

CENTRAL ALTAGRACIA, Inc.

vs.

RAMÓN VALDÉS et al.

The Court having recently heretofore held a joint conference with all Counsel in all of the above entitled cases involving the property and rights in and to the property known as the Central Altagracia, on this day sends a memorandum to the files (which Counsel are directed to examine) setting forth its views in the premises, and its intention to bring the litigation, receivership, etc., regarding this property to an end and of causing immediate issue to be raised on the pleadings for that purpose, and in accordance with said memorandum, it is ordered:

That nothing is to be done in suit No. 579, as the same is on appeal to the Supreme Court of the United States, (unless such appeal should be dismissed).

That the Demurrer in suit No. 203 be, and the same hereby is overruled.

That the matter of the stay of Execution now existing regarding suit No. 516, now in force, and the question of whether or not a lien exists under said execution and its priority will be considered in the issues to be tried the coming week.

That the Demurrer in suit No. 563, will be permitted to 45 remain in abeyance for a short time until issue in 564 and 565 is decided.

That the Demurrer in suits 564 and 565 as Consolidated be, and they hereby are overruled and respondents in each case are required to answer on or before Monday the 26th Instant so that a Trial of the issue thus raised can be begun upon the following day before the Court without the intervention of an Examiner or Master. Provided that nothing in this Order shall prevent the parties in either case, as may be proper, from immediately amending their Bills or from filing a cross-bill in addition to an Answer, but in such case the latter shall be considered as denied and issue made as may be proper so that the trial may proceed notwithstanding.

In the District Court of the United States for Porto Rico, San Juan and Mayaguez Divisions.

The Central Altagracia, Incorporated, Cases.

Memorandum.

There are six suits pending in this court, five in the San Juan Division and one in the Mayaguez Division, relating to the property mentioned in the title. The property is now, and has been for about a year last past, in the hands of a receiver of this court. The receivership, in so far as keeping the property as a going concern without running in debt, has been an unfortunate failure. It has run in debt during the year's receivership, all told, about seventeen thousand dollars, and more than half that amount is represented by outstanding receiver's certificates.

This deplorable conditions resulted in the court calling all counsel interested before it at Mayaguez on the evening of the seventeenth day of July, instant, when, after some consultation between the Court and the several counsel it was announced from the bench that the Court would soon take some action with a view to settling the many conflicting rights regarding the property.

47 Suit No. 579 is a bill in equity by the Sanchez de Larraoiti heirs against practically everybody else connected with the matter. These heirs are the owners of the original plant and the twenty-two acres of ground it is situated on, and leased it to one Salvador Castello and his brother Gerardo some three or four years ago for a term of twenty years. These lessees transferred their whole rights in the property and the lease to parties who

organized the present corporation known as the Central Altagracia, Incorporated, and that concern in one way and another is said to have put about a quarter of a million dollars' worth of improvements on the place and it is also said to be largely indebted as a consequence thereof. This suit is now pending on appeal to the Supreme Court of the United States in consequence of the Court having held it in abeyance until it could permit all the other rights to be litigated.

Suit No. 203 in the Mayaguez Division is also a bill in equity by these lessees Salvador Castello and Gerardo Castello against the aforesaid corporation, Central Altagracia, Incorporated, alleging that the latter has violated all the terms of the contract between the parties, and praying that the same be canceled and they restored to their original rights and the corporation enjoined from hereafter asserting any rights at all in or to the property in question.

Suit No. 516 is a judgment at law in the San Juan Division with a levy thereunder on the property in question for about seventeen thousand dollars in favor of the firm of Nevers & Callaghan of New York against the said Central Altagracia, Incorporated, for machinery furnished to and used in the erection of the sugar plant, as it is said, the execution being held in abeyance by this court pending this litigation.

48. Suit No. 563 is a straight suit at law in the San Juan Division by Ramon Valdez against the Central Altagracia, Incorporated, to eject the latter from the possession of the plant in question on the ground that the plaintiff is the sole owner thereof and that the defendant corporation is wrongfully in possession under condition broken of the contract between the parties. It is pending on demurrer.

Suit No. 564 is a bill in equity by Ramon Valdes against the Central Altagracia, Incorporated, and is, according to its terms, brought in aid of his suit at law No. 563 aforesaid. The bill is little more than a petition for a receiver to preserve the property as a going concern until the suit at law could be pressed to judgment. Under it, coupled with suit No. 565 mentioned next below, the receiver was appointed and has been acting for a year, as first above in this memorandum stated. This bill is pending on demurrer.

Suit No. 565 is a bill in equity and is just the reverse of No. 564 last aforesaid. It is brought by the Central Altagracia, Incorporated, against Ramon Valdes and Nevers & Callaghan, alleging that the said Valdes falsely claims to be the owner of the property and that he as an officer of the complainant corporation was mismanaging the property and was failing to protect the same against the judgment of Nevers & Callaghan, and makes many other allegations in the premises. This suit is also pending on demurrer. This suit and No. 564 were consolidated for the purposes of the receivership and several of the others endeavored to intervene therein.

We are strongly pressed to bring on law suit No. 563 of Ramon Valdes against this Central for trial and to give him immediate

49 possession of the premises as the owner thereof. This is strenuously objected to by the other officers of the Central Altgracia, and also by counsel for Nevers & Callaghan and incidentally by the same counsel for the Sanchez de Larragoiti heirs, although the suit regarding the latter is on appeal. After examining into the matter, we regard the effort to press Mr. Valdes' suit at law, under all the circumstances of the case, as preposterous and wholly unwarranted at this time. If the allegations, or any large portion of them, in the bill in suit No. 565 are true, which were not asserting, he has no right to maintain the suit at law, but we are not passing upon that fact either at this time. The Court cannot be induced to believe on the mere allegation of one party, when that is denied by the opposite party, that the officers of the Central Altgracia, Incorporated, gave away to Mr. Valdes the entire rights of all the stockholders and all the general creditors and sold the entire lease interest and all the machinery of the plant for sixty-five thousand dollars, or any other such sum, when the same is alleged to be worth nearly a quarter of a million.

We have concluded that the first thing to be done is to try out the rights of the Central Altgracia, Incorporated, and Mr. Valdes to a definite finish, and we are of opinion that that can be better done in a suit in equity than otherwise. We have examined the contracts that were furnished us, which are said to be a basis for Mr. Valdes' suit No. 563 at law and we are certain that to try the law suit at this time before the consolidated suits in equity, Nos. 564 and 565, would be wholly unsatisfactory and might work great injustice to others than the Central Altgracia even. It must be determined whether Mr. Valdes is a mere general creditor of the

50 Central Altgracia, as the latter claims, or whether he is simply a mortgagee with a more or less prior lien, or whether his claim to be the actual owner of the machinery of the plant and of all the lease rights therein of the Altgracia for the sixteen years of the term thereof yet to run is well founded. It must further be determined whether his mortgage lien, if he has one, is superior to Nevers & Callaghan's alleged judgment lien and superior to the alleged rights of the Castello brothers, and that of the creditors generally, and this, in our opinion, can be done in no other way so satisfactorily as by causing issue to be joined in the consolidated suits and proceed to a hearing on the same at once.

It seems to us that the whole matter should be litigated in one proceeding as far as possible. Therefore the suit at law No. 563 will still be held in abeyance for a short time. The demurrers in Nos. 564 and 565 will be overruled and each of the parties required to answer fully by Monday morning next. The answer in No. 563 by Mr. Valdes may, if necessary, be coupled with a cross-bill asserting all his rights of ownership which he expects to introduce as proofs in the law suit No. 563.

The Castello suit will also be held in abeyance until the determination of the principal issue between Valdes and the corporation, but an issue must be raised therein at once by proper answer and the demurrer will be overruled pro forma for that purpose, and that

proofs therein will be taken immediately after the proofs in suits Nos. 564 and 565, and it may if necessary be consolidated for the purposes of final decree. We see no necessity for doing anything with reference to the rights of the Sanchez de Parragoiti heirs as they probably cannot be affected by anything we do in these matters.

51 The Court now desires to notify all counsel and parties that it is not inclined to tolerate any interference with its program as here indicated, or at least with its determination to bring this unfortunate situation to a speedy end. Nor will it permit the pretended dissatisfaction or impatience of any of the parties to prevent such speedy determination of the matter. But this is not intended to mean that it is not willing and ready to receive all proper and respectful suggestions of modifications in the program as it progresses with a view to facilitating matters, but on the contrary it invites the aid and help of counsel and hopes that it will receive the same to the fullest extent that all counsel may be able to give it.

The Court has a lot of receiver's certificates and debts outstanding that are a lien superior at least to any claim Mr. Valdes can have in the premises, and it must protect them. As to whether or not such debts and receiver's certificates are superior to any rights Nevers & Callaghan may have, if they have any, is a question that will be determined. Nevers & Callaghan are respondents in suit No. 565 so their rights will be litigated and settled in the same decree, and they will be required to file an answer as their demurrer is also overruled *pro forma*.

The Court therefrom, beginning on Tuesday morning next after the answers are in, will proceed without the intervention of an examiner or master to hear the evidence itself, and will settle the rights of the parties as best it can.

The Court will determine during the remainder of this week or during the week while it is taking the evidence, as stated, what it will do with the plant itself and whether it will continue it in the possession of a more custodian under the present receiver or dis-
52 charge the present receiver and appoint a new one as cus-
todian or appoint a new one at a low salary and under a proper bond to make preparations to keep the plant as a going concern.

In any event it is suggested that if Mr. Valdes shall be held to be the owner of the machinery and the lease rights, he will be given possession. If he is held to be a mere general creditor and no lien is established against the premises, the rights of the parties in the property will be ordered sold as may be deemed best, and this with the least delay possible.

In other words, the object of the Court now is to get complete title in some one person or corporation in that property, or at least in the leasehold right therein.

It is here suggested that if anyone of the parties to this litigation can become possessed of the alleged rights of one or more of the others, even including the rights of the Sanchez de Larragoiti heirs,

and pay or assume with the consent of the owners thereof the receivership debts, it will greatly simplify this badly mixed and unfortunate legal controversy, and the quicker the same is done, the better.

(Signed)

B. S. RODEY, *Judge.*

53 On Thursday the 22nd day of July, 1909, among the proceedings had were the following, to-wit:

Equity 565. San Juan.

CENTRAL ALTAGRACIA
vs.
RAMÓN VALDÉS.

Comes now Messrs. Pettingill and Cornwell, and by leave of Court first had, file an Amended Bill of Complaint in the above entitled cause.

On Tuesday the 27th day of July 1909, among the proceedings had were the following, to-wit:

Altamaria Cases.

The filing of the papers following, is now entered of record, to-wit:

Filed by F. H. Dexter, of Counsel for Nevers and Callaghan on the 26th instant, in Nos. 564 and 565 Consolidated, motion of Nevers and Callaghan to be made Parties Defendants in the suit of Ramón Valdés vs. Central Altamaria, Inc., Equity No. 564
54 and to be permitted to file their answer to such Complaint or Cross-Bill as may be presented by the said Valdés.

There was also filed on July 26th, 1909, the Answer and Cross-Bill of defendants Nevers and Callaghan to the complaint in No. 565, San Juan, Central Altamaria, Inc., vs. Ramón Valdés and Nevers and Callaghan.

And on this Twenty-Seventh day of July, 1909, F. H. Dexter calls up his motion on behalf of his clients Nevers and Callaghan, for leave to be made party defendant in suit of Ramón Valdés vs. Central Altamaria, Inc., and to be permitted to file their answer therein, and Martín Travieso, Counsel for Ramón Valdés being present, the said Dexter argues his motion and no one opposing same, the Court fully advised, grants it.

Whereupon said Dexter files answer and Cross-Bill of Nevers and Callaghan to Cross-Bill of Ramón Valdés in Nos. 564 and 565 San Juan Consolidated.

Also files the said Dexter, a paper backed, Intervention and Protest of Succession Sánchez Larragoiti, to sale of machinery belonging to it.

Now comes Benjamin J. Horton, and enters his appearance as Associate Counsel for Nevers and Callaghan, defendants in the two Altamaria suits consolidated Nos. 564 and 565 San Juan.

(Amended Bill of Complaint.)

(Filed July 22, 1909.)

To the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, in Chancery Sitting:

Central Altagracia, Incorporated, a corporation duly organized and existing under the laws of the State of Maine and a citizen of said State, brings this its Bill of complaint against Ramon Valdes, who is a subject of the King of Spain residing in Porto Rico, and George C. Nevers, George B. Ackerson, and James G. Callaghan, as copartners doing business under the firm name of Nevers & Callaghan, who are each and all citizens and residents of the city and State of New York.

And thereupon your orator, complaining, says that, while it is, as above alleged, organized and exists under the laws of the State of Maine, its principal and only business is the running of a factory for the grinding of sugar cane and production of sugar therefrom, situated in the Añasco Valley, near the city of Mayaguez, Porto Rico; and that it is duly authorized and licensed to carry on business within this jurisdiction by the Territorial Government called the "People of Porto Rico."

Your orator further alleges that during or about the month of March, A. D. 1907, finding itself in need of additional ready money to meet its maturing obligations, it negotiated a loan from 56 the defendant Ramon Valdes, through its proper officers, for the sum of \$35,000 which it agreed to repay to said Valdes on or before the 1st day of April, 1908, with interest at the rate of 10% per annum, and as an additional consideration for the making of said loan it was agreed by the managing officers of your orator that said Valdes should be chosen a Director and Vice President thereof at a salary of \$3,000 per year, which agreement was carried out.

Your orator further alleges that during or about the month of June, 1907, the same being at the end of the grinding season for that year, the Director of your orator, after taking the advice of expert engineers, determined that it was necessary for the welfare of the Company to raise an additional loan of \$30,000 for the purpose of repairing and re-arranging the machinery already in its factory and purchasing additional machinery, and the President and Treasurer of your orator went to New York City for the purpose of negotiating a loan of sufficient amount to cover the above needs and also to pay off certain indebtedness then existing including the debt of said defendant Valdes and the debt of said defendant Nevers & Callaghan, which has since been reduced to judgment as will hereinafter more fully appear; that upon their arrival in New York said President and Treasurer submitted their plan to defendant Valdes, who approved and agreed to the same, and thereafter during their sojourn in New York for the purpose aforesaid said President and Treasurer entered into negotiations with several parties as well as opening further negotiations with said defendant Valdes, then Vice President of your

orator as aforesaid; and pending the conclusion of their different endeavors to effect a loan a preliminary agreement was arrived at with defendant Valdes whereby he was to advance to your orator the funds necessary to purchase the needed machinery and, if said officers of your orator were able to return said advances with certain commissions and interest before the 18th day of September, 1907, said Valdes was to accept the same, and in case of the failure so to return said advances, the same and such other advances as might be agreed upon thereafter were to be regarded as a refraction debt and the proper documents for that purpose were to be executed; that matters between your orator and said defendant Valdes remained in that condition until about the 15th day of October 1907, at which time, said officers of your orator, not having been able to return the said advances, and further negotiations having resulted in an agreement between said defendant Valdes and the holders of a majority of the stock on behalf of your orator, the same persons also constituting a majority of the Board of Directors, that, in consideration of the promise of said defendant to make said loan and finance the Company, he should be elected a member of the Board of Directors and President of the Corporation for a period of four years, or until the indebtedness of your orator to him should be paid off, at a salary of \$3,000 per annum, that he should have the right to appoint, subject to the approval of the Board, a Manager under him at a salary of \$2500 per annum, and that he should receive as a bonus for such financing a block of 150 shares of the capital stock of your orator of the par value of \$55,000, (which was all that was remaining in the treasury), the proper documents were duly drawn and executed as desired by said defendant for carrying into effect the arrangement aforesaid in the office of Curtis, Maller-Prevost & Co.

of New York City, the said stock was transferred without further consideration, and said defendant Valdes was elected

President he already being a member of the Board of Directors of your orator, and the former President, F. L. Cornwell, Esq., was elected Vice President. But your orator alleges that after said defendant Valdes has obtained from the other officers of the Company the execution of the documents aforesaid he at once, even before the parties signing said agreement had left New York, began to claim that a part of said contract was that he should also name a majority of the Board of Directors and to urge upon the remaining Directors the recognition of that right, and upon the refusal of the recognition of the Board to accede to his wishes he proceeded arbitrarily to usurp the powers of the Board as hereinafter set forth.

Your orator further alleges that, after said defendant Valdes became President of your orator in the manner aforesaid he proceeded to control and manage its business without reference to the wishes, judgment or authority of its Board of Directors, to expend money for all purposes without the knowledge or authority of any member of said Board, to change the plans for the reconstruction of the factory without such knowledge or authority, to install an incompetent Chief Engineer in charge of the running of the machine, against the protest of the other members of the Board upon the ac-

dental death of the regularly appointed chief, and in all respect to manage the business of your orator according to his individual will and caprice, even objecting to the presence of any of the other officials of the Company, in or about its factory when not accompanied by said Valdes. That from the time of the election of said

59 Valdes as President as aforesaid until the present day not one dollar of the funds of the Company has passed through

the hands of the Treasury but every dollar thereof has been collected and disbursed by said Valdes, or by those acting under his direction, so that said Treasurer, in order to avoid responsibility for the usurping acts of said defendant Valdes over which he had no control, was forced to act under a provision of the by-laws of your orator and ask the Board of Directors to allow him to surrender the performance of his duties as Treasurer to said Valdes by way of substitution, and has been ever since ignored in respect to such duties.

Your orator therefore alleges that said defendant Valdes never in fact loaned any amount to your orator beyond the first loan of \$35,000 hereinbefore referred to but had expended whatever amount he may have spent in your orator's business, with the exception of the price paid for a portion of the machinery purchased and some of the reconstruction work, without the knowledge, consent or authority of your orator's Board of Directors and without any part of the same passing through the treasury; that the total amount claimed to have been expended by said defendant in your orator's business is far in excess of any expenditure authorized or contemplated by said Board of Directors and far more than the financial condition of your orator warranted; and that a large portion thereof has been expended without benefit or advantage to your orator.

Your orator further alleges that after the making of the preliminary agreement between the officers of your orator and said Valdes in New York and the beginning of the purchase of machinery by him and making of repairs in the factory the said Valdes assumed the active and entire management and control of the business and the financing of your orator, sent his agents to your orator's

60 factory to take charge there and, through said agents spread throughout the community of Mayaguez the report that said defendant had been obliged to take over the property and business of your orator on account of the inexperience, incompetence and extravagance of the President and Treasurer formerly in control of its affairs, that said individuals had been removed and had no further connection with said business, and that said defendant had purchased and was the owner of said factory and machinery and all the property of your orator included in its said plant, the said defendant all the while well knowing that said individuals were still respectively Vice President and Treasurer of your orator and still members of its Board of Directors; all of which acts tended greatly to the injury of your orator in depriving those who would otherwise have dealt with it of all confidence in the stability of its business and tending to cause suspicion of the character and ability of its officials, other than said President. Thereby destroying its

credit as an entity, which it had built up and theretofore enjoyed generally in this community and more especially with its Colonias.

Your orator further alleges that said defendant, instead of carrying out his said agreement with your orator to advance money to it for the purchase of machinery, proceeded to contract for and purchase machinery in his own name, to have the same shipped to himself individually as consignee, and to erect the same in the factory which he then and since has claimed to be his own and to which he has now brought a suit at law in this court to establish his title yet he has at all times claimed and still claims that your

orator is indebted to him for the price of said machinery.

61 That said defendant also proceeded to procure and enter into contracts for the grinding of sugar cane in his own name, and the leasing of the Hacienda Carmelita in Cabo Rojo, instead of in the name of your orator, and in some instances the case so brought has been entered in the books of your orator as purchased at a higher price than that named in the individual contract with the defendant all which was in direct violation of his duty to your orator as its President and managing officer and to the financial injury of your orator.

Your orator further alleges that said defendant Valdes before the beginning of the grinding season which is just closing was guilty of inexcusable extravagance in the work preparatory to such season and expended large sums in excess of what was reasonably necessary for that purpose; that after the beginning of said grinding the management of orator's factory, under the direction of said defendant as President, has been both extravagant and incompetent, that soon after the season commenced he discharged from orator's employment the only employee competent to manage the sugar-making department, leaving the same in charge of persons wholly inexperienced and without skill in the handling of such machinery of the complicated and up-to-date kind contained in said factory; that he has continued as Chief Engineer during the whole of the crop a man known to him and demonstrated by his work to be incompetent; that he has so mismanaged the service of cane by the railroad cars that colonos have been unable to cut and haul cane to said cars with any regularity whereby the service of cane to said factory has been irregular causing increased expense in grinding and decreased results in sugar; that in the midst of the grinding season he absented himself from the Island for a period of nearly two months, during which time his Manager left in charge was without

62 authority or discretion in action as well as without funds properly to conduct your orator's business; that, in short, the extravagance and incompetence of the management of said defendant was such that, notwithstanding the perfect condition of the machinery in said factory and the unusual high price of sugar during all of said grinding season, the operations of your orator's factory show practically no profit and, considered in connection with the general expenses of your orator for the year show a positive loss, and the amount of sugar produced only three-fourths as much as either of the previous years of your orator's existence, notwithstanding

ing the increase in amount and improvement in arrangements of its machinery over previous years; and that said defendant has allowed the existing cane contracts of your orator to lapse, has made no successful effort to extend those which have expired, and the few new ones obtained have been made only for the one crop which is now at an end.

Your orator further alleges that said defendant Valdes expended several thousands of dollars in the purchase of scales for the weighing of cane and erected the same at various places along the line of the railroad, but said expenditure resulted practically without benefit as only a small amount of cane was purchased at any of said scales on account of the refusal of said defendant on behalf of your orator to pay the competitive rates which other buyers were paying, while on one occasion purchasing outright cane upon which your orator suffered a considerable loss.

Your orator further alleges that said defendant, since occupying the office of president, has purchased in his own name a large amount of the indebtedness owing by your orator at a large discount from the face value thereof, but instead of allowing your orator the benefit of the reduced price at which the same was acquired, and instead of using said money for the advantage 63 of your orator in acquiring cane contracts, of which your orator was in great need, said defendant has demanded and is now demanding of your orator's Board of Directors that entries be authorized in its books of account transferring said indebtedness into the name and favor of said defendant for the amount of its full face value and interest.

Your orator further alleges that in the month of November 1907, after defendant and his agents had been in full possession and control of the books and accounts of your orator since the preceding August, defendant made an offer of sixty cents on the dollar of the par value of orator's capital stock for a controlling interest therein, but after being in full control and management of all your orator's business during an entire sugar season although he claims that said season has been a prosperous and successful one, defendant has stated that said stock is worth practically nothing.

Your orator further alleges that on the 16th day of May, 1908, judgment was recovered in this court by the said defendants Nevers & Callaghan against your orator for the sum of about \$17,000 upon which execution has been issued and levied upon the said machinery and factory of your orator, yet said defendant Valdes as President of your orator has done nothing to avoid said execution and levy. That, although said defendant has had entire charge and control of the financial operations of your orator since his election as President, and has been charged with the duty as such of providing for means of paying the most pressing indebtedness of your orator, yet he has made no provision for the payment to himself of the interest now claimed to be due upon the loans claimed to have been made by him to your orator, or under the contract alleged to constitute a conditional sale to him of your orator's plant and machinery, 64 and is even now bringing a suit in this court to declare a forfeiture of the title of your orator to its said property be-

cause of the non-payment of said alleged interest, as hereinafter stated. That the suit at law aforesaid, which is No. 563 on the Law Docket of this court, is based upon one of the documents executed between your orator and said defendant Valdes at the office of Curtis, Mallet-Prevost & Colts in New York City at the time said Valdes agreed to make the additional loan to your orator as hereinbefore alleged, but the complaint therein does not set forth sufficient of the facts involved in said transaction to allow your orator to make the defence thereto which equity and good conscience require; that the other document executed at the same time between the same parties and all the facts and circumstances surrounding the transaction conclusively show that said transaction in fact constituted a loan from said Valdes to your orator, which said Valdes claimed to be in the nature of a refaccion loan, and not a sale of property by said Valdes to your orator, conditional or otherwise, as your orator had up to that moment been the undisputed owner of said property and executed in favor of said Valdes the document which is claimed to have conveyed title thereto to said Valdes solely and only for the purpose of aiding said Valdes in his endeavor to obtain refaccion security upon said property for his said loans, and not with any intention or design on the part of either party at that time to obtain title thereto, wherefore your orator alleges that by the further prosecution of said suit at law great and irreparable injury may be done to your orator, and such further prosecution thereof should be enjoined by the order and injunction of this honorable Court.

Your orator further alleges that, in case of each of the
65 loans so made to it by defendant Valdes as hereinbefore set forth, the said Valdes required, demanded and obtained from your orator as a part of each loan agreement the payment as compensation for the use of the money loaned a rent or rate of interest greater than was then or is now allowed by law to be charged or collected, although a part of such compensation or rent was, in order to avoid the penalties of usury, disguised in the form of salary or stock compensation; yet your orator avers that said loan contracts were each and all in truth and in fact usurious, and for that reason said defendant Valdes is not entitled to collect any part of the interest stipulated for in said contracts, but all of said interest now accrued, as well as any which might otherwise accrue in the future, has been wholly forfeited, and said defendant is also liable to be required to repay to your orator whatever sums he may have received as the salary stipulated for as part of the rent or compensation for said loans.

Your orator further alleges that there are practically no lands annexed to, or which pertain to, the factory of your orator which can supply the same with cane for the purpose of grinding, so that it is necessary in order that said factory may grind cane and manufacture sugar that your orator should have contracts with the growers of cane for the delivery of the same for grinding, which contracts are usually made in the months of June and following; that said Valdes has failed to provide contracts for cane to the extent needed by your orator as above set forth, and that further delay in the making of the

same will endanger the business of your orator and render it liable for large loss; that for the obtaining of a sufficient number of such contracts advances of considerable quantities of money to the cane

growers will be necessary; that the value of your orator's

66 said property depends on its carrying on its said business and

continuing as a going concern; that your orator has a large unsecured indebtedness beside that owing the defendant Valdes, and, unless a receiver is appointed, its said creditors will severally bring suits and recover judgments as defendants Nevers & Callaghan have done; and that such judgments will be followed by levy and sale thereunder of separate parcels of your orator's property for a small fraction of their real value; by which means the property of your orator will be frittered away to the great damage of both creditors and stockholders.

Your orator therefore avers that a Receiver should be appointed by and under the authority of this court to take charge and control of all and singular the property of your orator and to carry on its said business for the benefit of its creditors until its debts can be discharged or properly funded so that both creditors and stockholders may be secured or paid.

To the end, therefore, that your orator may have that relief which can only be obtained in a court of equity, and that defendant Ramon Valdes and the defendants George C. Nevers, George B. Ackerson and James C. Callaghan, as copartners under the name of Nevers & Callaghan, may answer this bill, but not upon oath, the benefit whereof is hereby expressly waived; that the transaction between your orator and defendant Valdes, which was consummated by the execution of the documents aforesaid at the office of Curtis, Mallett, Prevost & Colt in New York City, one of which documents is the basis of the suit No. 563 on the law side of this court, as hereinbefore alleged, may be decreed to have constituted a loan of money and not a sale of property; that said loan may be decreed to have been made at a usurious rent or rate of interest, and in consequence

67 thereof all interest thereon already accrued or hereafter to accrue to have been forfeited; that said defendant Valdes may be enjoined pendente lite from further proceeding with said cause No. 563 on the law side of this court and said injunction by the final decree herein be made perpetual; that said defendant Valdes may be decreed to have purchased whatever indebtedness of your orator to third parties he may be found by the final decree to own as trustee for and on behalf of your orator and be limited in any recovery from your orator on account thereof to the value or amount found by the court to have been paid by him therefor; that this court may ascertain and determine from the evidence to be produced before it what amount of money damage your orator has sustained by reason of the incompetency, mismanagement and unauthorized and wrongful acts of said defendant Valdes, pretending to act under his authority as President or otherwise and deduct the same from whatever amount of indebtedness may be found due the defendant on final hearing and that defendants Nevers & Callaghan may be enjoined from enforcing the execution upon their judgment against

the property of your orator pending the possession of the same by the Receiver of this court and until its further order; that a Receiver may be appointed for the purposes and responsibilities of receiver in such cases; that the defendants and all other persons may be enjoined from interfering with the possession or control of said receiver; and that your orator may have such other and further relief in the premises as equity may require and to your honor may seem meet.

May it please your Honor to grant unto your orator a writ of subpoena directed to the said defendants, Ramon Valdes, and George C. Nevers, George B. Ackerson, and James G. Callaghan, as co-partners doing business under the firm name of Nevers & Callaghan, commanding them at a certain time and under a certain 68 penalty therein to be limited, personally to be and appear before this honorable court, then and there to answer to this bill of complaint, and to stand to, perform and abide by such further orders, directions and decrees as to your Honor shall seem meet in the premises.

And your orator will ever pray,

N. B. K. PETTINGILL,
F. L. C. CORNWELL,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
District of Porto Rico:

F. L. Cornwell, being first duly sworn, says that he is Vice President as well as counsel for the complainant Company; that its President Ramon Valdes, is one of the defendants; that he has read the foregoing bill and knows its contents and the statements therein made are true of his own knowledge.

F. L. CORNWELL.

Sworn to and subscribed before me, this 22nd day of July, 1909.

JOHN L. GAY,
Clerk U. S. Dis. Court.

69 In the United States District Court for Porto Rico.

RAMÓN VALDES
vs.
CENTRAL ALTAGRACIA, Incorporated.

*The Answer of the Central Altagracia, Inc., to the Bill of Complaint
of Ramón Valdes, Complainant.*

This defendant now and at all times hereafter saving to itself all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties or imperfections in said bill of complaint contained, for answer thereto, or to so much thereof as this defendant, is advised it is material or necessary for it to make answer to, answering says:

I.

Defendants admit the truth of the allegations contained in paragraphs I and II of said bill of complaint, except the allegation that the complainant, Ramón Valdes, is a resident of the island of Porto Rico, which allegation defendant denies and alleges on the contrary that said complainant is a resident of the city and State of New York, United States of America.

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II.

Further answering defendant admits that on or about the date alleged in paragraph III of the complaint it entered into a written contract with the complainant the terms of which are substantially set forth in paragraphs III, IV, V and VI of said bill of complaint; but defendant denies that said contract was in its nature one of conditional sale or that its legal effect was to conditionally sell, assign or transfer to defendant the property in paragraph III described, or any property whatever. Defendant on the contrary alleges that said contract set forth in the paragraphs aforesaid of said bill of complaint is one of two contracts contemporaneous in time and forming in fact parts of one and the same transaction between complainant and defendant; and that said transaction in truth and in fact constituted an agreement for a loan from complainant to defendant for the principal sum of \$35,000, which was to be repaid with interest at the rate of 10% per annum, payable semi-annually, said principal sum being payable in four equal installments at the times and in the manner set forth in paragraphs IV and V of said bill of complaint.

Defendant further alleges that the sum of \$35,000, part of said above-mentioned sum of \$65,000 had previously during the year 1907 been loaned by complainant to defendant under an agreement whereby the same was to be repaid to complainant in the month of April, 1908; that in the month of August, 1907, defendant being in need of additional funds with which to purchase new machinery and remodel its plant, entered into negotiations with several parties in the city of New York, including the complainant Valdes, who was then Vice-President of the defendant, for the purpose of obtaining a loan of sufficient amount to serve the purposes aforesaid

and also to pay off certain indebtedness then existing, including the debt of \$35,000 to said complainant which was

not yet due; that pending the different endeavors of the officials of this defendant to effect the loan aforesaid a preliminary agreement was entered into by said officials of defendant with said complainant, whereby the latter was to advance to defendant the funds necessary to purchase the needed machinery, and if said officers of defendant were able to return said advances with certain commissions and interest and also the said sum of \$35,000 with its interest before the 15th day of September, 1907, complainant was to accept the same, but in case of the failure so to return the above amounts, the same and such other advances as might be thereafter agreed upon up to said sum of \$65,000 were to be regarded as a refaccion debt and the proper documents for that purpose were to

be executed; that mutters between complainant and defendant remained in the above condition until about the 15th day of October, 1907, and at that time, the officials of defendant not having been able to return to complainant the several sums aforesaid, further negotiations resulted in an agreement between complainant and defendant upon the following terms, to wit: that, in consideration of the promise of complainant to make said loan and finance the Company he should be elected a member of the Board of Directors and President of the Corporation for a period of four years, or until said indebtedness of defendant to him should be paid off, with a salary of \$3000 per annum, that he should have the right to appoint, subject to the approval of the Board, a Manager under him at a salary of \$2500 per annum and that he should receive as a bonus for such financing a block of 170 shares of the capital stock of defendant of the par value of \$15,000 (which was all that was remaining in the treasury); that thereafter complainant caused to be prepared in the Office of Curtis, Mallet-Prevost & Colt of New

72 York City, two certain documents in the form desired by him for carrying into effect the arrangement aforesaid, one of which documents was in form a conveyance by defendant to complainant of the property described as aforesaid, in complainant's bill, and the other was the document described in paragraphs III, IV, V and VI thereof aforesaid; and that the purpose and design of said documents and the legal effect of the same was to evidence a loan of money and not a conveyance of property, conditional or otherwise, as is alleged in complainant's bill of complaint. All of which will more fully appear from true and correct copies of said documents herewith filed "Exhibits "A" and "B" which are prayed to be considered as a part of this answer.

III.

Defendant denies that it went into possession of said premises and factory and took possession of said machinery and contract of lease by virtue of said contract of November 2nd 1907, as alleged in paragraph VII of complainant's bill, but on contrary alleges that it was already in possession of the property so described under an undisputed title and had been in such possession from the time said property had been acquired by it, by purchase from other parties, and that the complainant had never been in possession of, or had any control over or right to the same.

IV.

Defendant admits that according to the terms of said contract the first installment to be paid thereunder together with interest on the total debt of \$65,000 from the date said contract became due on the first day of April 1908, as alleged in paragraph VIII of complainant's bill, but denies that said contract was valid and enforceable according to its terms for the reason that, as hereinbefore set forth, complainant required, demanded and obtained from defendant as a part of each loan agreement the payment as compensation for the

use of the money loaned a rent or rate of interest greater than was then or is now allowed by law to be charged or collected, although a part of such compensation or rent, was, in order to avoid the penalties of usuries disguised in the form of salary or kick compensation; but defendant avers that said loan contracts were each and all in truth and in fact usurious and for that reason complainant has forfeited all right to collect from defendants any part of said indebtedness or to enforce said contract against this defendant in any respect or at least any and all interest on said indebtedness now accrued or hereafter to accrue has been wholly forfeited by the complainant; and that therefore in either of said events, as under the terms of said contract the first installment of principal to become due thereunder may be upon request extended for the further period of one year, no cause of action had accrued to complainant at the time of the commencement of this suit or of this suit at law referred to in said Bill of complaint.

V.

And for further answer defendant denies that complainant is entitled to the remedy or relief asked for in his Bill of Complaint herein or in his complaint in said suit at law No. 563: First, because in virtue of said contracts and agreement above set forth in paragraph II of this answer complainant obtained in law neither the legal title to the property referred to nor any lien or preference whatever thereon but became merely a general creditor of defendant to whatever amount this Court may finally determine may be due thereunder, if anything; and second, because defendant became liable and was prevented from carrying out the terms of said agreement in so far as the payment of the installment and interest which could have been due to complainant had he on his part faithfully complied with the terms of said agreement in consequence of the wrongful acts and omissions of the complainant himself in respect to the defendant on its business and the heavy damage thereby inflicted upon it as hereupon to be specified. Defendant alleges that, after complainant became the president of defendant corporation in pursuance of the said agreement set forth in said paragraph II hereof, he proceeded to control and manage its business without reference to the wishes, judgment or authority of its Board of Directors, to expend money for all purposes without the knowledge or authority of any other member of said board, to change the plant for the reconstruction of the factory without such knowledge or authority to instal an incompetent Chief engineer in charge of the running of the machinery against the protest of the other members of the Board in consequence of the sudden death of the regularly appointed Chief and in all respects to manage the business and finances of defendant according to his individual will and choice even objecting to the presence of any of the other officials of the Company in or about its factory when not accompanied by complainant himself; that from the time of the election of complainant as President as aforesaid until the appointment of the Receiver herein not one dollar of the funds of the Com-

pany has passed through the hands or within the control of the Treasurer of defendant Corporation, but every dollar thereof had been collected and disbursed by complainant or by those acting under his directions, so that defendant's Treasurer, in order to avoid responsibility for the usurping acts of complainant over which he had no control, was forced to take advantage of a provision of defendant's by-laws and ask its Board of Directors to allow him to surrender the performance of his duty as Treasurer to complainant by way of substitution, and has been ever since ignored by complainant in respect to such duties. Defendant further avers that

75 after the making of the preliminary agreement between complainant and defendant in New York and the beginning of

the purchase of machinery by complainant and the making of repairs in defendant's factory, complainant assumed the active and entire management and control of the business and the financing of defendant, sent his agents to defendant's factory to take charge there and, through said agents spread throughout of the Community of Mayaguez the report that complainant had been obliged to take over the property and business of defendant on account of the inexperience, incompetence, and extravagance of the President and Treasurer formerly in control of its affairs, that said individuals had been removed from office and had no further connection with defendant's business, and that complainant had purchased and was the owner of defendant's factory, machinery and all its property included in said plant, though complainant all the while well knew that said individuals were still respectively Vice President and Treasurer of defendant and still members of its Board of Directors.

Defendant further avers that complainant, instead of carrying out the agreement with defendant hereinbefore set forth to advance money to it for the purchase of machinery, proceeded to contract for and purchase machinery in his own name to have the same shipped to himself individually a consignee and to erect the same in the factory which he then and since has claimed to be his own and for the possession of which he has brought the suit at law described in his bill of complaint, while then and still claiming that defendant is indebted to him for the price of said machinery; and that complainant also proceeded to procure and enter into contracts for the grinding of sugar-cane and the leasing of the hacienda

76 "Carmelita" in Cabo Rojo in his own name, instead of in the name of defendant, and in some instance the cane so bought has been entered in the books of defendant as purchased at a higher price than that named in the individual contract with complainant; that before the beginning of the grinding season of 1908 complainant was guilty of inexcusable extravagance in the work preparatory to the grinding of the cane crop at defendant's factory and expended large sums in excess of what was reasonably necessary for that purpose; that after the beginning of said grinding complainant's management of said factory has been both extravagant and incompetent; that soon after the season commenced he was discharged from said factory the only employee competent to man-

age the sugar-making department, leaving the same in charge of persons wholly inexperienced and without skill in the handling of the complicated and up-to-date machinery contained in said factory; that he has continued as chief engineer during the whole crop a man known to him and demonstrated by his work to be incompetent; that he has so mismanaged the service of cane by the railroad cars that colonos have been unable to cut and haul cane to said cars with any regularity whereby the service of cane to said factory has been continuously irregular, causing increased expense in grinding and decreased results in sugar; that in the midst of grinding season he absented himself from the island for a period of nearly two months during which time the manager left in charge by him was without authority or discretion in action as well as without funds properly to conduct the business of defendant; that, in short, the extravagance and incompetence of the management of complainant was such that, notwithstanding the perfect condition of the machinery in said factory and the high price of sugar during all of said grinding season, the operations of defendant's factory for that season show practically no profit and considered in connection with the general expenses of defendant for the year, showed a positive loss.

77 The amount of sugar produced was only three-fourths as much as either of the previous years defendant had operated, notwithstanding the increase in amount and improvement in arrangement of its machinery compared with previous years; and that complainant has also allowed the existing cane contracts of defendant to lapse, has made no successful efforts to extend those which have expired, while the few new contracts obtained have been made only for the one crop above referred to.

And defendant avers that each and all of the acts of complainant above set forth were in direct violation of his duty to defendant as its President and managing officer, tended greatly to the financial injury of defendant by depriving those who would otherwise have dealt with it of all confidence in the good management or stability of its business and causing doubt of the character and ability of its officials, whereby its credit and the confidence of its colonos and the community in general which it had hitherto enjoined, was destroyed and a business for which defendant was organized practically ruined.

VI.

Defendant further denies that complainant was at the time of the beginning of this suit or is now, entitled to the immediate possession of said premises, factory, machinery and lease or that he was at said time, or now is the sole and exclusive owner of the same, as alleged in paragraph IX and X of his bill.

VII.

Defendant admits the allegations contained in paragraphs XII and XIII of said bill of complaint and admits the allegations of paragraph XIV and XV except as to the further allegation that it was insolvent at the time of the filing of said bill which allegation it most positively denies.

78 Wherefore this defendant having fully answered, con-

fessed, traversed, and avoided or denied all the matters in the said bill of complaint material to be answered, according to his best knowledge and belief, humbly prays this honorable Court to enter its judgment that this defendant be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained and for such further and other relief in the premises as to this honorable Court may seem meet and in accordance with equity.

CENTRAL ALTAGRACIA, INCORPORATED,

(Signed) F. L. CORNWELL, *President.*

F. L. Cornwell, being first duly sworn, says: that he is President as well as counsel for the above named defendant; that he has read the foregoing answer and knows its contents and that the matters therein set forth are true.

(Signed)

F. L. CORNWELL

Sworn to and subscribed before me this — day of July, 1909.

(Signed)

JOHN L. GAY,

Clerk, U. S. District Court.

In the City, County and State of New York, United States of America, on the twenty-eighth day of October, nineteen hundred and seven (1907), before me, Augustine P. Bananeo, Notary Public for Kings and New York Counties, and before the witnesses Edwin G. Lewis and Hugo Koltman, qualified by law and known to me, the following persons appeared, who are also known to me and who understand the Spanish language:

I, Frederick L. Cornwell, of lawful age, bachelor, Attorney at Law, resident of Mayaguez, Porto Rico, President and representing the Central Altagracia Incorporated, a corporation duly organized and existing under the laws of the State of Maine, United States of America, as set forth in the certificate of incorporation which I have had before me and was filed in the respective Department of State on the twenty third (23) day of August, nineteen hundred and five (1905). He was elected to the office which he is discharging, at a meeting of the Board of Directors of the Company and held on the twenty-eighth day of December, nineteen hundred and six (1906), as set forth in the respective minutes of the proceedings which I have had before me. The authority under which he acts appears from the resolution adopted at a general meeting of stockholders of the Company held on the twenty fourth (24th) day of October, nineteen hundred and seven (1907), the record of the proceedings of which said meeting I certify to have seen. The said resolution, the Spanish translation of which I certify to be correct, reads literally as follows:

"Whereas, at a meeting held by the Board of Directors of this Company, on the twenty-third (23rd) day of October, nineteen hundred and seven, the following resolutions were adopted:

"Whereas, it is convenient to the interests of this Company to dispose of its rights and properties in and to the mill Central Altamaria, for the purpose of paying such amounts as have been advanced to it by Ramon Valdes y Cobian;

"Therefore, be it resolved, that this Company do sell, transfer and assign to Ramon Valdes y Cobian, for the amount of

80 Sixty-Five Thousand Dollars (\$65,000.00) which it owes

him, the contract of lease and other rights which the Company acquired from Salvador and Gerardo Castelló Camps, which are the same as were acquired by the latter from Joaquin Sanchez de Larragoiti; and also such rights as belong to this Company in and to the machinery and appurtenances on the premises of the said Central Altamaria at the time of the transfer of the said contract of lease to the Company; as well as such rights as belong to this Company in and to the machinery and appurtenances introduced by it thereafter on the said premises.

"Be it further resolved, that the President of this Company be, and he is hereby authorized, empowered and directed to execute and sign, in the name and on behalf of the Company, all such public documents or instruments as may be necessary, convenient or desirable, for the purpose of carrying the preceding resolution into effect.

"Therefore, it is resolved to affirm and ratify the preceding resolutions and the purchase which the Company has made from Ramon Valdes y Cobian of the contract of lease and all other rights therein described, and to consider the said resolutions as the acts and resolutions of the stockholders of this Company."

2. Don Ramon Valdes y Cobian, of lawful age, married, capitalist and a resident of this City, appears herein in his own behalf.

The President of the Central Altamaria Incorporated, hereinafter called the Company, and Don Ramon Valdes y Cobian, hereinafter called Valdes y Cobian, stated:

(1) That the eighteenth (18th) day of January, nineteen hundred and five (1905), Don Joaquin Sanchez de Larragoiti, celebrated in Paris, France, a contract of lease with Don Salvador Castelló, extending the same on the sixth (6th) day of June, of the same year, which said documents were reduced to public instruments, by means of the notarial record which literally reads as follows:

"Number three hundred and fifty-four (354). In the City of Mayaguez, on the thirtieth (30th) day of June, nineteen hundred and five (1905), before Mariano Riera Palmer, lawyer and Notary Public of Porto Rico, residing in this City, and before the witnesses hereinafter named, appears Don Salvador Castelló y Camps, of lawful age, bachelor, property owner, resident of this City.

I certify to his identity, profession and residence; he assures me that he is in the full enjoyment of his civil rights and having, in my judgment, the legal capacity necessary for this act, states:

First. That under date of January the eighteenth (18th) ultimo and while in the City of Paris, (France), he executed, together with Don Joaquin Sanchez de Larragoiti, resident of the said city of

Paris, a private document which he exhibits to me in this act, and which, being literally copied, reads as follows:

"Paris, January 18, 1908.—Between the undersigned, Don Joaquin Sanchez de Larragoiti, resident of Paris, and Don Salvador Castelló, resident of Mayaguez, Porto Rico, and visiting in this city of Paris, the following has been agreed to:

"1st. Don Joaquin Sanchez de Larragoiti, owner of the Central Altagracia and twenty two (22) cuerdas of land annexed thereto, situated in Mayaguez, Porto Rico, consents to grant to Don Salvador Castelló the said Central and the twenty-two (22) cuerdas of land for the exploitation thereof, for a term of ten (10) years.

"2nd. Under no circumstances and in no respect shall the said Don Salvador Castelló contract any obligation whereby the said Don Joaquin Sanchez de Larragoiti shall have the least personal responsibility, nor shall the said Don Salvador Castelló under no circumstance and in no respect alienate, mortgage or encumber the Central and the twenty-two (22) cuerdas annexed thereto, with any obligation or lien that shall affect the said property.

"3rd. In brief, the right and powers that Don Joaquin Sanchez de Larragoiti grants unto Don Salvador Castelló, are to operate and work the said property for his account, and introduce therein such machinery as he may deem convenient; which said machinery, at the end of the years mentioned in Article 1st hereof, shall become the exclusive property of Don Joaquin Sanchez de Larragoiti.

"4th. In consequence of the Articles aforementioned, the said Don Salvador Castelló shall have the right to grind, and benefit by, the largest possible quantity of sugar cane in the said Central Altagracia.

"5th. The buildings shall be covered by Fire Insurance and in case of an unfortunate accident the amount of insurance shall be applied to the reconstruction of such as may be destroyed.

"6th. The expense of fire insurance on the Central, as well as taxes on the property, shall be deemed to be operating expenses and shall be deducted each year from the net profits that may be derived from the said exploitation; but in no case shall the 82 said Don Salvador Castelló claim any liability or part thereof, from the owner Don Joaquin Sanchez de Larragoiti.

"7th. As already stated in Article 3rd., Don Salvador Castelló may add any machinery or apparatus to those now existing in the said Central Altagracia. In cases of expenses of this nature for new machinery or repairs, the whole shall be for account of the operators, and neither Don Salvador Castelló nor any other person shall have the right to demand any return or payment of any part of the expenses that may originate from said repairs, nor shall such new machinery as Don Salvador Castelló may consider advisable to add to the machinery now existing, be deemed to be expenses, and therefore no claim or deduction shall be made from such profits as may accrue to Don Joaquin Sanchez de Larragoiti out of the exploitation of the said property.

"8th. Upon the expiration of the term agreed on under this contract, any improvement or machinery installed in the said Central

shall remain for the benefit of Don Joaquin Sanchez de Larragoiti; and Don Salvador Catelló shall have no right to claim anything for the improvements made.

"9th. After each crop such profits as may be produced by the Central Altagracia shall be distributed and twenty-five per-cent (25%) thereof shall be immediately paid to Don Joaquin Sanchez de Larragoiti as equivalent for the rental of the said Central and of the twenty-two (22) cuerdas of land surrounding the same. The remaining seventy-five (75%) per cent shall belong to Don Salvador Castelló; who may interest therein whomsoever he may wish either for the whole or part thereof.

"10th. In case of death of Don Joaquin Sanchez de Larragoiti, this contract shall be respected by his heirs. In case of death of Don Salvador Castelló, his brother, Gerardo Castelló, shall take his place and be a contracting party, if he so desires. Otherwise the plantation, in such a condition as it may be in at his death, shall immediately pass into possession of its owner Don Joaquin Sanchez de Larragoiti.

"11th. Don Joaquin Sanchez de Larragoiti shall authorize his present manager and attorney in fact, in Mayaguez, Porto Rico, Don Joaquin Fornabello, for the purpose of giving possession of the property "Altagracia" and of the lands thereof to Don Salvador Castelló.

"12th. It is the will of the contracting parties that this private contract shall have the same force as if it were a public instrument, to which it may be reduced by any one of the said parties, and the expenses thereof shall be for account of the party who so reduces it.

"This contract was read and approved by the contracting parties, who sign the same in duplicate, in Paris, on the eighteenth (18th) day of January, nineteen hundred and five (1905).

"It is further agreed as an additional condition that Don Joaquin Sanchez de Larragoiti agrees with Don Salvador Castelló on the term of one (1) year from and after this day to begin work 83 on the Central "Altagracia". Upon the expiration of this term, if the necessary improvements shall not have been begun by him, then this contract shall be null and void, and no cause of action shall accrue to any of the contracting parties by reason thereof. S. Castelló, J. Sanchez.

"The document hereinabove inserted is a true copy from the original thereof, to which I certify and refer, and which I return to the party producing same, signed and sealed by me."

"Second. That under date of the sixth (6th) instant they extended the contract hereinbefore inserted, by the condition which being literally copied reads as follows:

"Having celebrated a contract with Don Salvador Castelló, in this city, on the eighteenth (18th) day of January of the current year, for the exploitation, for a term of ten (10) years, of my property named 'Altagracia', situated in Mayaguez, Porto Rico, I make known by this document which I desire to have the same force as if it were public, that the said term of ten (10) years is hereby extended to twenty (20) years; it being well understood that this ex-

tension does not modify nor alter the other clauses of the contract, Paris, June sixth (6th), nineteen hundred and five (1905). J. Sanchez."

"It is a true copy from the original thereof, to which I certify and refer, and which I return, signed and *and* sealed by me.

"Third. And the party hereto, Señor Castelló, availing himself of the right in him vested under Paragraph 12 of the document hereinabove inserted, by this act he reduces the said private contract to a public instrument for the purpose of having the same duly recorded in the proper Registry of Property, to which end a copy hereof shall be filed in said office.

"He so covenants and signs with the witnesses Don Federico Philippi and Don Avelino Irizani, residents of this city, upon my reading this instrument to them at the same time and informing them of their right to do so for themselves, to all of which I certify. S. Castelló.—F. Phillipi.—Avelino Irizani.—Signed Lodo. Mariano Riera Palmer.

"2. That Don Salvador and Don Gerardo Castelló, by instrument executed in Mayaguez, on the first (1st) day of July, nineteen hundred and five (1905), before Mariano Riera Palmer, Lawyer and Notary Public, assigned to the Central Altagracia Company, their rights and actions under the contracts hereinbefore inserted, as set forth in the public instrument transcribed as follows:

Paris, January 18, 1908.—Between the undersigned Don Joaquin Sanchez de Larragoiti, resident of Paris, and Don Salvador Castelló, resident of Mayaguez, Porto Rico, and visiting in this City of Paris, the following has been agreed to: 1st. Don Joaquin Sanchez de

84 Larragoiti, owner of the Central Altagracia and twenty-two (22) cuerdas of land annexed thereto, situated in Mayaguez, Porto Rico, consents to grant to Don Salvador Castelló the said Central — and the twenty-two (22) — of land for the exploitation thereof for a term of ten (10) years.

2nd. Under no circumstances and in no respect shall the said Don Salvador Castelló contract any obligation whereby the said Don Joaquin Sanchez de Larragoiti shall have the least personal responsibility, nor shall the said Don Salvador Castelló under no circumstance and in no respect alienate, mortgage or encumber the Central — and the twenty-two (22) cuerdas of land annexed thereto, with any obligation or lien that shall affect the said property.

3rd. In brief, the right and powers that Don Joaquin de Larragoiti grants unto Don Salvador Castelló are to operate and work the said property for his account, and introduce therein such machinery as he may deem convenient, which said machinery, at the end of the years mentioned in Article 1st hereof, shall become the exclusive property of Don Joaquin Sanchez de Larragoiti.

4th. In consequence of the above mentioned articles the said Don Salvador Castelló shall have the right to grind, and benefit by, the largest possible quantity of sugar cane in the said Central Altagracia."

5th. The buildings shall be covered by Fire Insurance and in case

of an unfortunate accident, the amount of insurance shall be applied to the reconstruction of such as may be destroyed.

6th. The cost of Fire Insurance on the Central —, as well as taxes on the property, shall be deemed to be operating expenses and shall be deducted each year from the net profits that may be derived from the said exploitation; but in no case shall the said Don Salvador Castelló claim any liability or part thereof from the owner Don Joaquin Sanchez de Larragoiti.

7th. As already stated in Article 3rd, Don Salvador Castelló may add any new machinery or apparatus to those now existing in the said Central Altagracia. In case of expenses of this nature for new machinery or repairs, the whole shall be for account of the operators, and neither Don Salvador Castelló nor any other person shall have the right to demand any return or payment for any part of the expenses that may originate from such repairs, nor shall such new machinery as Don Salvador Castelló may consider advisable to add to the machinery now existing be deemed to be expenses; and, therefore, no direct claim or deduction shall be made from such profits as may accrue to Don Joaquin Sanchez de Larragoiti out of the exploitation of the said property.

8th. Upon the expiration of the term agreed on under this contract, any improvement or machinery installed in the said Central — shall remain for the benefit of Don Joaquin Sanchez de Larragoiti; and Don Salvador Castelló shall have no right to claim anything for the improvements made.

9th. After each crop, such profits as may be produced by the Central "Altagracia" shall be distributed, and twenty-five per cent (25%) thereof shall be immediately paid to Don Joaquin Sanchez de Larragoiti, as equivalent for the rental of the said Central — and of the twenty-two cuerdas of land surrounding the same. The remaining seventy-five — (75%) shall belong to Don Salvador Castelló, who may interest therein whomsoever he may wish either for the whole or part thereof.

10th. In case of death of Don Joaquin Sanchez de Larragoiti this contract shall be respected by his heirs. In case of death of Don Salvador Castelló, his brother, Gerardo Castelló, shall take his place and be a contracting party, if he so desires. Otherwise, the plantation, whatever its condition may be at the time of his death, shall immediately pass into the possession of its owner Don Joaquin Sanchez de Larragoiti.

11th. Don Joaquin Sanchez de Larragoiti shall authorize his present manager and attorney in fact in Mayaguez, Porto Rico, Don Joaquin Torrabello, for the purpose of giving possession of the property "Altagracia" and of the lands thereof to Don Salvador Castelló.

12th. It is the will of the contracting parties that this private contract shall have the same force as if it were a public instrument, to which it may be reduced by any one of the said parties, and the expenses thereof shall be for account who so reduces it.

This contract was read and approved by the contracting parties who sign the same in duplicate, in Paris, on the eighteenth day of January, nineteen hundred and five (1905).

It is further agreed as an additional condition that Don Joaquin Sanchez de Larragoiti agrees with Don Salvador Castelló on the term of one (1) year from and after this day to begin work on the Central "Altagracia." Upon the expiration of this term, if the necessary improvements shall not have been begun by him, then this contract shall be null and void, and no cause of action shall accrue to any of the contracting parties by reason thereof. S. Castelló. J. Sanchez.

The document hereinabove inserted is a true copy of the original thereof, to which I refer and certify.

Second. That under date of the sixth (6th) ultimo they extended the contract hereinbefore inserted, by the condition which being literally copied reads as follows:

'Having celebrated a contract with Don Salvador Castelló, in this City, on the eighteenth (18th) day of January of the current year for the exploitation, for a term of ten (10) years, of my property named "Altagracia," I make known by this document, which I desire to have the same force as if it were public, that the said term of ten (10) years is hereby extended to twenty (20) years; it being well understood that this extension does not modify or alter the other clauses of the contract. Paris, June sixth (6th), nineteen hundred and five (1905). J. Sanchez.'

"It is a true copy from the original thereof, to which I refer and certify."

86 Third. The private document hereinbefore inserted has been reduced to a public instrument in accordance with the provisions thereof, under the instrument executed before me under date of yesterday, by Don Salvador Castelló, the original of which I have before me for this act."

Fourth. In virtue whereof, the contracting parties have agreed among themselves on the assignment of all rights and actions in and to the Central "Altagracia," and therefore, Messrs. Salvador Castelló and Gerardo Castelló by these presents do assign, waive and transfer to Don Frederiek L. Cornwell for the corporation to be organized under the name of "Central Altagracia," of which he is the trustee, the rights which they have of exploiting the said Central "Altagracia" under the conditions established in the contract hereinbefore inserted, and, further, under the following conditions:

"First. The corporation to be organized under the name of 'Central Altagracia' will donate to Don Salvador Castelló eight thousand dollars (\$8000.00) in paid-up shares of the stock to be issued by it, for and in consideration of which the Company shall have the right to install and operate steam machinery with a grinding capacity of two hundred (200) tons of sugar cane per day of twenty-four (24) hours.

"Second. When the company shall have increased the number of tons to be ground during twenty-four (24) hours to three hundred (300) tons, then Señor Castelló will receive Four Thousand Dollars (\$4,000.00) more in paid-up shares; and in the same manner the same Señor Castelló will continue to receive Two Thousand Dollars (\$2,000.00) in paid-up shares as the Company goes on increasing

the number of quintals of cane; it being understood that the said amount of Two Thousand Dollars (\$2,000.00) is for each increase of one hundred (100) tons.

"Third. In consideration of this contract the Company binds itself to use the services of Don Salvador Castelló and in case of his incapacity or personal disability, or in his absence, then the Company shall make use of the services of the other assignor Don Gerardo Castelló, as Superintendent and at an annual salary of Fifteen Hundred Dollars (\$1500.00), beginning from and after the first (1st) day of October next.

"Fourth. The said Señor Castello from the moment that he takes charge of the aforesaid services as superintendent, shall render the same uninterruptedly and shall devote all his time to the services of the assigned Company and shall only be responsible to the Board of Directors of the corporation.

"Fifth. In case of absence of Don Salvador Castelló, his brother, Don Gerardo, shall continue to perform the same services, and in case that he should have to relinquish his position for good and sufficient reasons, the Company binds itself to pay him his salary during the life of this contract, as if he were an employee of the corporation; and in case of the death of the said Don Salvador, his brother, Don Gerardo, will substitute him, pursuant to the provisions of the private contract hereinbefore inserted.

87 Fifth. This assignment of rights is made by Don Salvador Castelló under the same conditions as are stipulated in the aforesaid contract above inserted, and the said Don Gerardo assigns such rights as he may have as the substitute of his brother Don Salvador, under the aforesaid contract, and shall be subject in the same way to the contract entered into with Don Joaquín Sánchez de Larragoiti, as well as to the present contract.

Sixth. Don Frederick L. Cornwell, in representation of the Company to be organized under the name of "Central Altamacia," accepts this contract in all its parts, as it is in accordance with the agreement, binding himself together with the other parties hereto, to a faithful compliance with the conditions stipulated in this document.

In testimony whereof, they so state, covenant and sign with the witnesses Don José Ramírez and Don Rosalino Biaggi, residents of this city, after I read to them this instrument, at the same time informing them of their right to do so, each one for himself, to all of which I certify.—C. Castello, F. L. Cornwell, José Ramírez, Rosalino Biaggi. Signed Lodo Mariano Riera Palmer.

3. That by public instrument executed in the City of San Juan, Porto Rico, on the eleventh (11th) day of April, nineteen hundred and seven (1907), before Francisco de la Torre y Garrido, Lawyer and notary, the Central Altamacia Company executed in favor of Don Ramon Valdes y Cobian the contract of conditional sale contained in said instrument, which is as follows:

"Number Eighty."

"In the City of San Juan, Porto Rico, on the eleventh (11th) day of April, nineteen hundred and seven (1907), before me, Francisco

de la Torre Garrido, Lawyer, and Notary of this Island, with residence and vicinity at the Capital thereof, appear:

Mr. Noah B. K. Pettingill, a party of the first part, who states that he is forty-four (44) years of age, married, lawyer and a resident of this city, and

Don Ramon Valdes y Cobian, party of the second part, who says that he is fifty-two (52) years of age, married to Doña Encarnación Cobian, property owner, and also of this vicinity.

The said Señor Valdes y Cobian appears herein in his own right, and the said Mr. Pettingill in the name and on behalf of the corporation domiciled in the District of Mayaguez and named "Central Altagracia," of which he is the Secretary and Treasurer, having been authorized to execute these presents by the Board of Directors of the same, as shown by the resolutions adopted by said Board,

which are attached hereto and made an integral part hereof.

88 Therefore, they have, in my opinion, the legal capacity necessary to execute this instrument of conditional sale.

They state the following facts:

1st. That the Central Altagracia, in the sugar factory established in the District of Mayaguez, near Añasco, has installed and is the owner of the apparatus and machinery hereinafter specified, to wit: a grinding mill, number twenty-three (23), of six (6) rollers, four (4) feet in length each, manufactured by Fulton Iron Works; two (2) crushers; two defecating pans, each of a capacity of one thousand-and (1000) gallons, and four (4) defecating pans each of a capacity of five hundred (500) gallons; a ten (10) foot vacuum pan, and another one of seven (7) foot, one of them manufactured by Payne & Joubert, and the other one manufactured in Scotland; a quadruple effect, manufactured by the Lyllia Manufacturing Company, of a capacity of seventy-five thousand (75,000) gallons; four (4) crystallizers manufactured by Payne & Joubert; nine (9) centrifugals, four (4) of them manufactured in Scotland and five (5) American; five (5) boilers for generating steam, one (1) of three hundred (300) horse power, two (2) of two hundred horse power each, one of one hundred horse power, and another one of Eighty (80) horse power; thirty (30) iron tanks; one steam engine, number two hundred and ninety five (295), manufactured by Corliss; several pumps and small machines and other apparatus and utensils appertaining to said factory.

2nd. That the said Central is installed in lands belonging to Don Joaquin Sanchez de Larragoiti, who ceded the same together with the land for a term of twenty (20) years to Don Salvador Castelló, under a contract in which, among other things, it was agreed as follows, to wit:

7th. As already stated in Article 3rd, Don Salvador Castelló may add any new machinery or apparatus to those now existing in the said Central Altagracia. In case of expenses of this nature for new machinery or repairs, the whole shall be for account of the operators, and neither Don Salvador Castelló nor any other person shall have the right to demand any return or payment for any part of the expenses that may originate from such repairs, nor shall such new ma-

chinery as Don Salvador Castelló may consider advisable to add to the machinery now existing be deemed to be expenses, and, therefore, no direct claim or deduction shall be made from such profits as may accrue to Don Joaquín Sánchez de Larragoiti out of the exploitation of the said property.

8th. Upon the expiration of the term agreed on under this contract, any improvement or machinery installed in the said Central shall remain for the benefit of Don Joaquín Sánchez de Larragoiti; and Don Salvador Castelló shall have no right to claim anything for the improvements made.

9th. After each crop such profits as may be produced by the Central Altagracia shall be distributed, and twenty-five per cent. (25%) thereof shall be immediately paid to Don Joaquín Sánchez de Larragoiti, as equivalent for the rental of the said Central and of the twenty-two (22) cuerdas of land surrounding the same. The remaining seventy-five per cent. (75%) shall belong to Don Salvador Castelló, who may interest therein whomsoever he may wish, either

for the whole or part thereof.

89. 3rd. That by instrument executed in Mayaguez, before Don Mariano Riera Palmer, Lawyer and Notary, with residence and vicinity in the said city, the said Don Salvador Castelló subrogated in his place, in so far as the contract set forth in the preceding paragraph refers to, the corporation represented by Mr. Pettigill.

4th. That the said corporation being in need of a certain amount of money, it agreed to make a conditional sale of the machinery and apparatus specified in paragraph first (1st) hereof to the other party hereto, the said Valdes y Coblen, and carrying the said agreement into effect under the following clauses, they covenant:

First. Mr. Noah B. E. Pettigill, in the event in which he acts, transfers on conditional sale that will mature on the first (1st) day of April of the ensuing year, nineteen hundred and eight (1908), to Don Ramon Valdes y Coblen, who accepts the transfer, all the apparatus and machinery specified in paragraph first (1st) hereof, with all other appurtenances and utensils annexed to the factory and that belonged to the corporation Central Altagracia, there being included in said sale all such other apparatus and machinery as may be mounted by the said corporation while the conditional term shall last and which shall be a part of the said factory for the manufacture of sugar.

Second. The aforesaid sale is made for the amount of Thirty-Five Thousand Dollars (\$35,000.00), of which the representative of the vendor corporation acknowledges to have received Twenty-Five Thousand Four Hundred Dollars (\$25,400.00) prior to this act and to his entire satisfaction, and the balance of Nine Thousand Six Hundred Dollars (\$9,600.00) shall be turned over to the vendor corporation by Señor Valdés, immediately upon being requested to do so by the former.

Third. The aforesaid sale shall be consummated in favor of the purchaser Señor Valdés upon the expiration of the first (1st) day of April, nineteen hundred and eight (1908).

Fourth. The machinery and apparatus transferred under this instrument to Señor Valdés y Cobian are leased by the latter to the corporation Central Altgracia for the price or rental of Three Thousand Six Hundred Dollars (\$3,600.00) per annum, payable at maturity.

Fifth. Should this sale be consummated, the vendor corporation subrogates the vendee, Señor Valdés in its place and stead in everything concerning the contract with Don Joaquin Sanchez de Larragoiti, in paragraph 2nd of the statement of facts hereinabove referred to, assigning all its rights and actions, under the said contract, to the said Señor Valdés, who shall in turn, be bound to comply with the obligations of the assigning corporation.

Such is the instrument which the contracting parties execute and covenant and by which they bind themselves to stand and abide at all times, under the liabilities of law, and designate this city for all acts and proceedings arising thereunder.

90 Don Julio Bengoechea and Don Jesús Noriega are witnesses, without legal disqualification, known to me, to act as such, and residents of this city.

This instrument was read by the contracting parties and witnesses and was approved by the former and signed by all.

And as to the identity of the contracting parties, their age, whether married or single, profession and residence, and to everything else herein contained, I, the Notary, certify. (Signed) X. B. K. Pettingill.—R. Valdés.—J. de Bengoechea.—F. de la Torre. There are the proper Internal Revenue stamps cancelled by the seal of the Notary."

(4) That the Central Altgracia Company received from Don Ramon Valdés y Cobian the said amount of Thirty-Five Thousand Dollars (\$35,000.00) referred to in clause second of the preceding instrument, copied under No. 3, which said amount was invested by it in the purchase of machinery which it has already installed on its property in Porto Rico and in improvements to the same; which gives to this credit the character of "refaccionario."

(5) That, because of its being convenient to their interests, both parties have entered into the contract contained in the following clauses:

First. The President of the Central Altgracia Incorporated, in the name and in representation of the same, sells, assigns and transfers to Ramon Valdés y Cobian, and this latter accepts, the contract of lease and all other rights which the Company acquired from Salvador and Gerardo Castelló Camps, under instrument copied under No. 2, which said rights are such as were acquired by the latter named parties from Don Joaquin Sanchez de Larragoiti under the contracts set out in the instrument hereinbefore inserted under No. 1; and he further sells, assigns and transfers to the said Valdés y Cobian each and every right appertaining to the Company in and to the machinery, utensils and appurtenances that existed on the properties of the Central Altgracia at the time that the contract of lease was assigned to the Company, as well as such rights as the Company

has in and to the machinery, utensils and appurtenances installed by it thereafter on the said properties.

Second. The consideration for the sale, assignment and transfer of the said contracts and rights is the amount of Sixty-Five Thousand Dollars (\$65,000.00), American gold, which the Company has received already from Valdés y Cobian in this way. Thirty-Five Thousand Dollars (\$35,000.00) which the Company was owing him under the public instrument dated April the eleventh, nineteen hundred and seven (1907), executed before the Notary, Francisco de la Torre y Garrido, hereinbefore inserted under No. 3, and the balance of Thirty Thousand Dollars (\$30,000.00) which the Company has received afterwards in cash from Valdés y Cobian.

Third. Inasmuch as the sale, assignment and transfer of the contract of lease, machinery, utensils and appurtenances which the Company makes this day to Valdés y Cobian, dispose of the contract copied under No. 3 and set forth in the instrument dated April eleventh (11th), nineteen hundred and seven (1907), executed in the City of San Juan, Porto Rico, before Francisco de la Torre Garrido, Notary Public, both parties declare the said contract and instrument cancelled and substituted by the contract contained in this instrument.

91 Fourth. All expenses for this and any other instruments in connection with this contract and executed by the two parties hereto shall be for account of the Company.

Fifth. Both parties accept the rights and undertake the obligations arising under this contract.

I certify that I have informed the contracting parties that this instrument should be filed in the proper Registry of Property in Porto Rico, to be recorded therein and be effective as against third parties.

In the presence of the witnesses I read the foregoing to the contracting parties, to whom I explained the legal force and effect of this instrument, and fully aware of the contents hereof they ratified the same without modifying it, and accepted the same and sign with the witnesses, to all of which I certify.

(Signed)

FREDERIC CORNWELL,
President Central American, Inc.
RAMON VALDES

(Signed)

Witnesses:

EDWIN S. LEWIS (Signed)
HUGO KOHLMAN.

Before me,

(Signed)

A. P. BARRANCO,
Notary Public.

I, Peter J. Dooling, Clerk of the County of New York, do hereby certify that A. P. Barranco is a Notary Public.
(There is a seal.)

Filed at 10 A. M. this day, as per entry No. 939, Folio 229, Volume 1st of the Day Book.

Mayaguez, January 3, 1908.

(Signed) The Registrar, JOSÉ E. BENEDICTO.

(There is a seal of the Registry.)

The registration of the preceding document is not admitted because of the defect of not describing the property therein referred to, and because the right of lease thereby assigned does not appear recorded in favor of the assignor, according to the indexes, and for the same reasons a cautionary entry for 120 days cannot be made either.

Mayaguez, February 19, 1908.

(Signed) The Registrar, JOSÉ E. BENEDICTO.

(There are two internal revenue stamps of fifty cents each, cancelled.)

(Cancelled two internal revenue stamps of fifty cents each as per No. 1 of the Tariff and Internal Revenue Law.

(Signed) BENEDICTO.

92 (There is a seal of Registry.)

The party filing notified this 17th day of March, 1908.

(Signed) BENEDICTO

A true and correct translation.

(Signed) J. VASQUEZ.
Interpreter & Translator.

In the City, County and State of New York, United States of America, on the second (2nd) day of November, nineteen hundred and seven (1907), before me, Joseph A. Carás, Notary Public in and for the Counties of Kings and New York, and before the witnesses Augustin P. Barranco and Frederick K. Seward, residents and qualified by law.

Appeared the following named persons who are also known to me and who understand the Spanish language:

(1) Don Ramón Valdés y Cobian, acting in his own behalf, of lawful age, married, capitalist, resident of this city;

(2) Frederick L. Cornwell, of lawful age, bachelor, attorney at law, resident of Mayaguez, Porto Rico, President of and representing the Central Altagracia Incorporated, which is a corporation duly organized and existing under the laws of the *the* State of Maine, United States of America, as set forth in the certificate of incorporation which I have had before me and was filed in the respective Department of State on the twenty third (23rd) day of August, nineteen hundred and five (1905). He was elected to the office which he is discharging at a meeting of the

Board of Directors of the Company, held on the twenty-eighth (28th) day of December, nineteen hundred and six (1906), as set forth in the respective minutes of the proceedings which I have had before me. The authority under which he acts appears from the resolution adopted at a general meeting of the stockholders of the Company, held on the thirtieth (30th) day of October, nineteen hundred and seven (1907), the record of the proceedings of which said meeting I certify to have seen. The said resolution, the translation of which into Spanish I certify to be correct, reads literally as follows:

"Whereas the Board of Directors of this Company at a meeting held on the twenty-eighth (28th) day of October, nineteen hundred and seven (1907), adopted the following resolutions:

"Whereas it is convenient to the interests of this Company to acquire the rights and properties belonging to Ramon Valdés y Cobian in and to the Central Altamaria, situated near the 91 "City of Mayaguez, in the Municipality of the same name, in the Island of Porto Rico;

"Therefore, be it resolved that this Company purchase from Ramon Valdés y Cobian for the amount of sixty five thousand Dollars (\$65,000.00), American gold, the contract of lease and all other rights unto him belonging in and to the Central Altamaria. The said amount shall be paid in installments, with interest thereon at the rate of ten per cent (10%) per annum, and the transfer of title thereto shall not be made until the full amount of Sixty-Five Thousand Dollars (\$65,000.00) and interest thereon shall have been paid.

"And be it further resolved that the President of this Company be and he is hereby authorized, empowered and directed to execute and sign, in the name and on behalf of the Company, all such public documents or instruments as may be necessary or desirable for the purpose of carrying the preceding resolution into effect.

"Therefore be it resolved to ratify and approve the preceding resolutions and the purchase which the Company has made from Ramón Valdés y Cobian of the contract of lease and of all other rights therein described and to consider the said resolutions as the acts and resolutions of the stockholders of this company."

Don Ramón Valdés y Cobian, hereinafter called Valdés y Cobian, and the President of the Central Altamaria Incorporated, herein-after called the Company, have entered into the contract contained in the following clauses:

First. Ramon Valdés y Cobian conditionally sells, assigns and transfers to the Central Altamaria Incorporated, and the latter accepts the contract of lease and all other rights which he has in and to the Central Altamaria, situated near the City of Mayaguez, in the municipality of the same name, Island of Porto Rico, and which he acquired from the said Company under instruments executed in this City yesterday, before the undersigned Notary Public. The said contract of lease and all other rights are the same as the Company acquired from Salvador and Gerardo Castelló Camps, and by

these latter from Joaquin Sanchez de Larragoiti; and, further, such other rights as belonged to the Company, for any reason, in and to the machinery, utensils and appurtenances existing on the properties of the Central Altgracia, and which were sold by the 95 said Company to Valdés y Cobian under the instrument aforesaid.

Second. The consideration of the conditional sale, assignment and transfer of the said contract and rights is the amount of Sixty-Five Thousand Dollars (\$65,000.00), American gold, which the Company shall pay punctually to Valdes y Cobian, in San Juan, Porto Rico, or in this City, with interest thereon at the rate of ten per cent (10%) per annum which is the current rate in Porto Rico, to be computed every six (6) months, on installments as follows: one fourth part on the first (1st) day of April, nineteen hundred and eight (1908); one fourth part, on the first (1st) day of April, nineteen hundred and nine (1909); one fourth part, on the first (1st) day of April, nineteen hundred and ten (1910), and the remaining balance on the first (1st) day of April, nineteen hundred and eleven (1911).

If, for any reason, the Company shall be unable to pay any installment on the dates fixed, Valdes y Cobian binds himself to extend the same for a term of one (1) year, provided the interest on the total amount shall have been paid. Such deferred installment, together with the next maturing on the same day, shall be paid at the same time; and, failing to do so, the whole amount shall, on that fact alone, become due and shall be immediately paid.

The Company shall pay interest, including such as may accrue on any deferred installment, to Valdes y Cobian, with strict punctuality, every six (6) months at either one of the two places hereinabove stated.

Third. Should the Company fail to pay interest to Valdes y Cobian with strict punctuality, or at most within thirty (30) days from and after the maturity of each semi-annual payment; or should it fail to pay any one of the four parts of the price in the manner hereinabove stated; or should it fail to comply with any of the obligations assumed by it under this contract, then, by 96 that mere fact, all other installments shall be held to have become due, and Valdés y Cobian may enter immediately in possession of the property and rights conditionally sold under this instrument.

The Company reserves to itself the right to make advance payments, at any time, to Valdes y Cobian, on account of the money due him by reason of the price of this contract; and in such event the Company shall only pay such interest as shall have accrued on the amounts paid, up to the date of the respective payments.

Fourth. It is expressly stipulated and agreed that the "dominio" and ownership of the contract of lease and of all other rights which are the object of this contract, will belong exclusively to Valdes y Cobian while the Company shall not have paid in full the price of the said contract of lease and of all other rights hereinabove mentioned, including the rights to the machinery, utensils

and appurtenances of the Central Altamaria. Wherefore the said Valdés y Cobian, on the mere fact of not having been paid on the terms agreed to, either the interest on any of the four (4) installments of the price, may take immediate possession of the contract of lease, rights, machinery, utensils and appurtenances of the Central Altamaria, as the owner thereof, and for which he is especially authorized by the Company from this moment.

Fifth. The Company undertakes the following additional obligations:

a. It will pay for its own account all impost and taxes, whether ordinary or special, and whether of a fiscal, municipal or of any other nature, affecting or connected with the properties and rights that are the object of this contract.

b. While the amount and interest referred to in this contract shall not have been paid in full, it shall keep covered by fire insurance and against all other risks insurable in Porto Rico, all the properties and rights that are the object of this agreement;

97 *c.* binding itself to keep the said insurance policies in force, and to do nothing, or permit anything to be done that shall affect the said properties and rights to the prejudice of the said Valdés y Cobian, or that may invalidate or diminish the value of the said insurance policies.

In case of losses covered by said policies, or by any of them, Valdés y Cobian has the right to receive directly and immediately all the proceeds of policy or policies, which he shall invest in making repairs of the damages caused, in the purchase of machinery, utensils and appurtenances to replace such as may have been destroyed, and reinsuring the properties and rights hereinabove mentioned.

c. It shall be subject in everything to the laws of Porto Rico and of the State of Maine, United States of America; and shall, furthermore, comply with and cause to be complied with all rules and regulations in force in matters of sanitation, fire, roads or of any other nature that may affect the properties and rights herein referred to; and it undertakes forthwith all liabilities resulting from violations of or for non-compliance with said laws, rules and regulations; the Company thus guaranteeing that Valdés y Cobian will be fully exempted from such liabilities.

d. It shall not place, or allow to be placed, to the prejudice of Valdés y Cobian any lien, encumbrance or easement of any kind, on the properties and rights conditionally sold.

e. It shall manage the properties and business of the Central Altamaria in the regular manner for this kind of enterprises, and shall keep in a perfect condition of repair and maintenance the buildings, dependencies, machinery, utensils and appurtenances of all kinds, making, at its own expense, on petition of Valdés y

98 Cobian or without it, all the necessary repairs and such substitutions of machinery, utensils and appurtenances as may be indispensable to make, in accordance with the practice of the best engineers.

Sixth. Should the Company fail to undergo the expenses which it is bound to undergo under this contract, of whatsoever nature the

same may be, including payment for taxes, imposts and liens, Valdés y Cobian may do so, in which case, any sums so expended by him, and interest thereon at the rate of ten per cent (10%) per annum, shall be paid to him by the Company, together with the amount that should be paid by the latter for the next installment of the price.

Seventh. Valdés y Cobian is hereby fully authorized by the company to examine, whether personally or through his agents and representatives, at any time and as often as he may deem it advisable, all the properties, books and papers of the Company to convince himself as to whether or not the said properties, machinery, utensils and appurtenances are kept in complete condition of repairs, and whether or not they are being duly managed and operated; and also to convince himself as to whether or not each and every allegation that the Company has assumed under this contract are being complied with.

Eighth. All the expenses occasioned under this or any other instrument that may be executed by the two parties hereto in connection with this contract shall be for account of the Company.

Ninth. Both parties accept the rights and undertake the obligations arising under this contract.

I certify that I have informed the parties that they should file this instrument in the proper Registry of Property in Porto Rico to be recorded therein, to the end that it may produce its effects against third parties.

99. In the presence of the witnesses I read the foregoing to the contracting parties, to whom I explained the force and legal effect of this instrument, and fully cognizant of the contents hereof, they ratified the same without modification, accepted it and sign with the witness, to all of which I certify.

(Signed)

R. VALDÉS.

(Signed)

F. L. CORNWELL,

President Central Altagracia, Inc.

Witnesses:

A. P. BARRANCO.

FREDERICK K. SEWARD.

Before me,

(Signed)

JOSEPH A. CARAS.

Notary Public.

There is a certificate issued by Peter J. Dooling showing that Joseph A. Caras is a notary public.

A true and correct translation:

Interpreter and Translator.

100 In the District Court of the United States for Porto Rico,
Sitting at Mayaguez.

(Filed July 26, '09.)

In Equity. No. 565.

THE CENTRAL "ALTAGRACIA," INCORPORATED, Complainants,
vs.
RAMON VALDEZ and NEVERS & CALLAGHAN, Defendants.

In Equity. No. 564.

RAMON VALDEZ, Complainant,
vs.

THE CENTRAL ALTAGRACIA, INCORPORATED, Defendant.

Motion of Nevers & Callaghan to be Made Parties Defendant in the Suit of Ramon Valdez vs. Central Altagracia, Incorporated, Equity No. 564, and to be Permitted to File Their Answer to Such Complaint or Cross-bill as May Be Presented by the said Valdez.

To the Honorable Judge of the District Court of the United States
for Porto Rico:

Never & Callaghan, a co-partnership composed of George W. Nevers and James G. Callaghan, citizens of the United States and residing in the City of New York, represent that, as shown by the records of this court, they have acquired a judgment against the

Central Altagracia, Incorporated, for the sum of fifteen thousand and eight hundred seventy-eight and 87/100 (\$15,878.87)

Dollars; that an execution was issued upon the said judgment and was levied upon all the machinery within the factory building of the said Central Altagracia; that by reason of such circumstances they have acquired a vested right of interest in such property. They aver, however, that in the Bill of Complaint which the said Ramon Valdez has filed in the above entitled cause of Ramon Valdez vs. Central Altagracia, Incorporated, and in an Answer and Cross-bill which he has filed in the above entitled cause of Central Altagracia, Incorporated versus Ramon Valdez and Nevers & Callaghan, he is making a claim to be the owner of the machinery of the said Central Altagracia, Incorporated, upon which the levy of the said execution in favor of your petitioners has been made.

Your petitioners therefore pray that they may appear as defendants to the said complaint or cross-bill of the said Ramon Valdez and that they may file the accompanying answer and cross-bill in opposition to the claims of the said Valdez.

San Juan, July 26, 1909.

(Signed)

F. H. DEXTER,
Attorney for Nevers & Callaghan.

102 *Answer and Cross-bill of Defendants, Nevers & Callaghan.*

(Filed July 26, 1909.)

CENTRAL ALTAGRACIA, INCORPORATED,
VS.
RAMON VALDES and NEVERS & CALLAGHAN.

These defendants, now and at all times hereafter saving to themselves all and all manner of benefit of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the Bill of Complaint herein filed,—for answer thereto, or to so much thereof as these Defendants are advised it is material or necessary for them to make answer to, answering, say:

That on the 16th day of May, 1908, these Defendants obtained in this Court a judgment in their favor, and against the Complainant herein, the Central Altagracia, Incorporated, for the sum of \$15,878.87, together with interest and costs.

That on the 27th day of May, 1908, execution was issued upon the said judgment out of this Court, and that on the 29th day of May, 1908, the same was levied by the Marshal of this Court upon "all the machinery within the factory building of the said Central Altagracia, Incorporated, near Mayaguez, Porto Rico, by posting a like copy of the said execution, together with a copy of the notice of the said levy, at the entrance of the said factory-building, leaving the said machinery in the custody of J. Sifre, Manager."

No Writ of Error has been prosecuted by said Central Altagracia, Incorporated, from the said judgment, and the same is now in full force and effect.

That thereafter, and on the 3rd day of June, 1908, this Court made an Order directing the Marshal of this Court to refrain 102 1/2 from selling any of the property levied upon under the said execution until the further order of this Court, but in and by the said order it was expressly provided that the same should in no manner affect the lien or rights, if any, acquired in the property levied upon by reason thereof.

These defendants say that no part of the said judgment, interest or costs, has been paid.

Defendants further allege that by the said judgment and levy of the said execution they acquired a valid and vested right in and to the property of the Central Altagracia, Incorporated, so levied upon; and Defendants further state that there is no other claim, charge or lien, upon the said property which has preference to the said claim and levy of these defendants, with the exception of the claim and interest of the *Sucesión* of Don Joaquin Sanchez de Larragoiti in and to the said property composing the plant and mill of the Central Altagracia, Incorporated.

These Defendants insist that this Court has no power to delay them in the enforcement and collection of their debt solely because of the appointment of a Receiver to take charge of the said property; and

they further allege that the rights which they have secured by reason of the levy of the said execution are being imperiled by delay, and that the machinery levied upon is rapidly deteriorating in value.

Defendants, therefore, respectfully pray that the Order of this Court made on the 3rd day of June, 1908, restraining the execution aforesaid, be rescinded, and that they be permitted to enforce their said execution by a sale of so much of the property levied upon as may be sufficient to realize the amount of their said judgment, together with interest and cost.

FRANCIS H. DEXTER,
Attorney for Nevers & Callaghan.

103 In the District Court of the United States for Porto Rico,
Sitting at Mayaguez.

(Filed July 27, 1909.)

In Equity. No. 565.

THE CENTRAL "ALATAGRACIA," INCORPORATED, Complainants,
vs.

RAMON VALDEZ and NEVERS & CALLAGHAN, Defendants.

In Equity. No. 564.

RAMON VALDEZ, Complainant,
vs.

THE CENTRAL ALTAGRACIA, INCORPORATED, Defendant.

*Answer and Cross-bill of Nevers & Callaghan to the Bill of Complaint
and Cross-bill of the said Ramon Valdes, Filed in the Above-entitled Causes.*

These defendants, Nevers & Callaghan, being a co-partnership composed of George W. Nevers and James G. Callaghan, citizens of the United States and residents of the city of New York, now and at all times hereafter, saving to themselves all and all manner of benefit and exceptions, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the Bill of Complaint and Cross-bill of the said Ramon Valdes herein filed, - for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

I.

On the sixteenth day of May, 1908 these defendants obtained in this Court a judgment in their favor and against the Central Altamaria, Incorporated, for the sum of fifteen thousand eight hundred seventy-eight and 87/100 (\$15,878.87) dollars, together with interest at the rate of six (6%) per annum from the thirtieth day of July, 1907, and their costs, said judgment being rendered in the action

instituted by these defendants against the said Central Altagracia, Incorporated, in the District Court of the United States for Porto Rico, sitting at San Juan, being law case No. 516.

II.

The said judgment represents the balance of a total indebtedness of twenty-five thousand (\$25,000) dollars for that amount of actual cash delivered by these defendants to the Central Altagracia, Incorporated, on the — day of October, 1905 for the purpose of buying machinery for the Central sugar factory of the said Central Altagracia, Incorporated; and these defendants, upon information and belief, aver that all of the said sum of twenty-five thousand (\$25,000) dollars was so invested by the Central Altagracia, Incorporated, and the necessary machinery for the operation of the said Central sugar factory was therein installed prior to the first day of January, 1907; and, upon information and belief, these defendants aver that 165 said machinery has been in constant use in the said factory, and now forms a part of its plant, and is a part of the same machinery which one Ramon Valdez is now claiming in this litigation.

That on the 27th day of May, 1908 execution was issued upon the said judgment out of this Court, and that on the 29th day of May, 1908, the same was levied by the Marshal of this Court upon "all the machinery within the factory building of the said Central Altagracia, Incorporated, near Mayaguez, Porto Rico, by posting a like copy of the said execution together with a copy of the notice of the said levy, at the entrance of the said factory building, leaving the said machinery in the custody of J. Sifre, Manager."

III.

The said Valdez, in the Bill of Complaint as well as in his Answer and Cross-bill filed in the above consolidated suits sets up that on the second day of November, 1907, he entered into a contract of conditional sale in the City of New York, by virtue of which the said Valdez conditionally sold, assigned and transferred to the Central Altagracia, Incorporated:

(1).—All his right, title, and interest in and to the lease of the Central Altagracia factory and twenty-two "cuerdas" of land upon which the same was situated, in the jurisdiction of Mayaguez, Porto Rico, which lease was executed on January eighteenth, 1905 between Joaquin Sanchez Larragoiti in favor of one Salvador Castelló;

(2).—All of the right, title and interest of the said Valdes in and to all of the machinery contained in the said Central factory on said date; to wit: November second, 1907.

A copy of the said contract of the so-called conditional sale, correctly translated into the English language is attached to this Answer and Cross-bill, marked "Exhibit 'A,'" and is made a part hereof to all intents and purposes as if the same were copied herein.

IV.

The said Valdez claims to have acquired the lease and machinery in the last paragraph described, by virtue of a certain document executed in the City of New York on the twenty-eighth day of October, 1907, in and by which the Central Altagracia, Incorporated, purported and pretended to sell and transfer to the said Valdez the said contract of lease and the machinery in the last paragraph described; but these defendants aver that the purpose and object of the said pretended sale was only to secure to the said Valdez the payment of the sum of sixty-five thousand dollars due to him by the said Altagracia, Incorporated, as in the last mentioned document is set forth, and these defendants aver that at the time of the execution of the said last mentioned document, the machinery and assets of all kinds of the Central Altagracia, Incorporated, were reasonably worth three hundred thousand (\$300,000.) dollars.

And these defendants further aver that it was the understanding and agreement between the said Valdez and the said Central Altagracia, Incorporated, that such pretended sale to him of the said machinery and lease was to be in the nature of security only, and for that purpose the so-called conditional sale of November second, 1907 was immediately made by the said Valdez back to the Central Altagracia, Incorporated, it being understood by the said parties that, under the laws of Porto Rico, the Central Altagracia, Incorporated, could not execute a mortgage upon such machinery and lease, they having the character of personal property (bienes muebles), as said parties believed.

V.

These defendants aver that the said pretended sale by the Central Altagracia, Incorporated, to Valdez of the said machinery was null and void as against the creditors of the Central Altagracia, Incorporated, and particularly as against these defendants and the Succession of the said Sanchez Larragoity, for the reasons:

(1).—As regards the attempted transfer of the lease the Central Altagracia, Incorporated, had no power to transfer the same to the said Valdez or to any other person or Company.

(2).—The Central Altagracia, Incorporated, had no power under the laws of Porto Rico to transfer by such a document as 107 that executed on the twenty-eighth day of October, 1907, or in any other manner, the machinery therein described, because the same constituted permanent fixtures attached to the soil, which could only be transferred with the latter by the owner thereof.

These defendants state that neither the pretended sale from the Central Altagracia, Incorporated to Valdez, nor the alleged conditional sale from Valdez to the Central Altagracia Incorporated, has ever been registered in the Registry of Property, and the defendants further allege that the said documents were secretly made and purposely kept from public knowledge by both the officers of the Central Altagracia, Incorporated, and the said Ramon Valdez, until

long after defendants herein obtained their said judgment and after the levy of the said execution as hereinafter set forth. These defendants aver that the action of the said Central Altagracia, Incorporated, and of the said Ramon Valdez, in so executing the said documents and in keeping the same secret, constituted a fraud upon all of the creditors of the Central Altagracia, Incorporated, and particularly upon these defendants. (A copy of the said document executed by the Central Altagracia, Incorporated, to Ramon Valdez, duly translated into the English language, is attached hereto and made a part hereof, being designated "Exhibit 'B.'")

VI.

The said lease executed on January eighth, 1905 between the said Joaquin Sanchez Larragoiti and the said Salvador Castelló, was a contract of a personal nature involving the reposal of special confidence and trust by the said Joaquin Sanchez Larragoiti in the said Salvador Castelló; and, according to the terms thereof,

108 no person or corporation could acquire said lease or work the said Central Altagracia property who was not brought in by the said Salvador Castelló or with whom the said Salvador Castelló directly and personally did not interest in the working thereof. The said lease further prohibited in express terms that the said Salvador Castelló should under any circumstance, alienate, mortgage, or affect the said Central or the twenty-two "cuerdas" on which the same was situated, with any lien or encumbrance whatsoever. (A copy of the said lease, duly translated into the English language is hereto attached and designated "Exhibit 'C.'")

VII.

Although this Court has, in a certain action instituted by the heirs of Juan Sanchez Larragoiti against the Central Altagracia, Incorporated, and Salvador Castelló, rendered a judgment to the effect that Castelló has the right under the terms of the lease to transfer it to the Central Altagracia, Incorporated, these defendants aver that if such be the law, certainly under the terms of the said lease the said Castelló exhausted such powers in that regard as the court has determined him to have, and the Central Altagracia, Incorporated, had no power to alienate or encumber in any manner whatsoever, without the consent of the Sucesión de Sanchez Larragoiti or of the said Salvador Castelló, the said Central and the machinery therein and the twenty-two cuerdas of ground upon which the same is situated.

VIII.

These defendants aver that it is the design and purpose of the said Valdez to appropriate to his own use, all of the property above referred to, amounting perhaps in value to nearly half a million dollars, for the payment of an alleged debt of sixty-five 109 thousand dollars, notwithstanding that in truth and in fact, Valdez is but a general creditor whose claim these defend-

ants, upon information and belief, aver to be largely padded with fictitious claims and usurious interest.

Forasmuch, therefore, as these defendants believe that it would be inequitable and oppressive to permit the said Valdez to assert his claim to the machinery and lease herein above described, and that it would be inequitable to these defendants to deprive them of the benefit of their said judgment and levy of execution, they respectfully pray:

(a) That the court decree that the said Valdez is not entitled to the said lease or any part of the machinery hereinabove described because of the documents hereinabove referred to or because of any indebtedness due and owing by the Central Altagracia, Incorporated, to the said Valdez, but that such indebtedness shall be decreed by the court to be of a general character to be realized only by a judgment or decree for such amount as may be due and just and the sale of such property as may belong to the Central Altagracia, Incorporated, subject, however, to the priority of right of these defendants and of such other persons as may have priority.

(b) That these defendants may be permitted to enforce, without delay, their said execution for the full amount of the judgment, with interest and costs.

(c) That the said pretended sale from the Central Altagracia, Incorporated, to the said Valdez, and the so-called conditional sale from Valdez to the Central Altagracia Incorporated, herein described, to be held to be null and void.

(d) That the court decree that the Central Altagracia, Incorporated, had no power to transfer to the said Valdez or to any other person, the said contract of lease executed between Sanchez Larragoiti and Salvador Castello.

(e) That the receivership herein be immediately terminated and that the orders and injunctions heretofore made by this Court restraining these defendants from enforcing their said execution, be rescinded, and that the clerk be instructed to issue forthwith an alias execution, and that the marshal of this court proceed to enforce the same upon such new machinery as has been placed in the Central Altagracia subsequent to its taking possession of the said property.

(f) That the Court perpetually enjoin the prosecution of the action at law instituted by the said Valdez against the Central Altagracia, Incorporated, being No. 563, San Juan Division.

(g) That the Court will grant such other and further relief in the premises as in equity may be right and proper, and that these defendants be entitled to all costs incurred by them in the present litigation.

(Signed)

F. H. DEXTER,
Solicitors for Nevers & Callaghan.

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(Filed July 27/09.)

In the District Court of the United States for Porto Rico.

Equity. No. 564 and No. 565.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, Inc.,

Consolidated With

CENTRAL ALTAGRACIA, Inc.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Answer.

The Answer of Ramón Valdés, the Above Named Defendant to the Bill of Complaint of Central Altagracia, Inc., Complainant.

The defendant Ramón Valdés, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

The defendant admits that in the month of March, 1907 the plaintiff herein negotiated a loan from the defendant for the sum of \$35,000, which the said plaintiff agreed to repay to the defendant on or before the first day of April, 1908, with interest at the rate of 10% per annum; but the defendant denies that the agreement by the Managing officers of the complainant corporation that defendant should be chosen a director and Vice-President of the Company at a salary of \$3,000 per year, was made as an additional consideration for the making of said loan from the defendant to the complainant, the fact being that such agreement was made after the negotiation of the said loan had been completed and in consideration for 112 services rendered by defendant; and the defendant denies that he received any salary as director and Vice-President of the said Company.

The defendant admits that the Directors of the Complainant corporation went to the City of New York for the purpose of negotiating an additional loan sufficient to repair and re-arrange the machinery of the Central and to pay off the debts of the said corporation; and that upon their arrival in New York the President and Treasurer of the complainant corporation submitted their plan to defendant who approved the same. The defendant states that he

has no knowledge or information as to whether or not the said President and Treasurer of the said Company entered into negotiations with several parties. The defendant denies that by the terms of the preliminary agreement arrived at between the Officers of the complainant and the defendant herein, he, the defendant, was to advance to the complainant the funds necessary to purchase the needed machinery and that if the officers of complainant were able to return said advances with commissions and interest defendant was to accept the same, and in case of failure to return said advances, the same and all future advances were to be regarded as a refaccion debt and the proper documents drawn; and the defendant states the fact to be that by the terms of the said preliminary agreement it was provided that the defendant was to buy the necessary machinery for his own account, and was to turn it over to the central Alta-gracia when the price of it was paid back to the defendant with interest, together with a commission for the purchasing and shipping of the said machinery.

The defendant denies that the agreement between the defendant and the holders of a majority of the stock on behalf of the complainant, whereby the defendant was to be elected a member of the Board of Directors and President of the corporation for a term of four years at a salary of \$3,000 per year with the right to appoint a Manager at \$2,500 per annum, and whereby he was to receive a block of 150 shares of stock of the complainant, was made in consideration of the promise made by the defendant to make the said loan and finance the Company; and the defendant states the fact to be that he was elected President of the said corporation after the execution of the deed of conditional sale of Nov. 2, 1907, for the reason that the election of the defendant as such President was considered to be beneficial to the interests of the said corporation in as much as the colonos and other peoples did not want to enter into contracts with the members of the old Board of Directors; and the defendant further states the fact to be that the said block of 150 shares of stock of the said company was received by him as compensation for services rendered and not as the consideration for his promise to finance the corporation.

The defendant denies having ever claimed the right to name a majority of the Board of Directors of the complaining corporation; and he also denies having urged upon the remaining directors the recognition of such right; and the defendant further denies having proceeded arbitrarily or in any other manner to usurp the powers of the said Board of Directors.

The defendant denies that he, as President of the complaining corporation ever proceeded to control and manage the business of the said corporation without reference to the wishes, judgment or authority of its Board of Directors; and defendant states that he always acted in compliance with the resolutions adopted by the Board of Directors of the said corporation, and that there was a long period of time during which there were no meetings of the said Board on account of the absence of its members, other than the defendant.

The defendant denies having ever expended any money

for any purpose whatsoever, without the knowledge or authority of the complainant's Board of Directors; and he further denies having in any manner changed the plans for the reconstruction of the factory of the complainant.

The defendant admits that he installed in the factory of the complainant a Chief Engineer in charge of the running of the machinery, but the defendant denies that the said Engineer was so installed by him against the protest of the other members of the Board; and the defendant further denies that the said Engineer was incompetent for such position. And the defendant states the fact to be that the said engineer installed by him in the said factory was and is a very competent, able and skillful engineer, who is at present in charge of the Central Carmen, a very important sugar factory; and that the defendant had and was compelled to install the said engineer in order to fill the place of the former engineer, one Mr. Voss, who had been killed in an accident which occurred in the complainant's factory; and Mr. F. L. Cornwell, the only other member of the Board present at that time opposed the appointment of the said engineer, without giving any reasons for his opposition and simply because he wanted to appoint his own brother to fill such a responsible and difficult position, for which he was clearly incompetent.

The defendant denies that he ever managed the business of the complainant company according to his individual will and caprice; and he further denies having ever objected to the presence of any other of the officials of the company in or about its factory, whether they were or not accompanied by defendant.

The defendant admits that he acted as the Treasurer of the complainant corporation, after his election as President of the company, and that he collected and disbursed the funds of the said company; but the defendant denies that the surrender by the Treasurer of the performance of his duties as such Treasurer to the defendant by way of substitution was made in order to avoid responsibility for the usurping acts of defendants; and the defendant denies having committed any usurping acts, as alleged in the bill of complaint, and he also denies having ignored the Treasurer in respect to his duties as such. And the defendant states that the moneys collected by him were disbursed and used by him in paying for the machinery sold by him to the Central, paying for the reconstruction works of the Central, which was authorized by the Board of Directors, advancing money to colomos and in other payments necessary for carrying out the work of the Central. And the defendant states that his substitution as Treasurer of the Company was made for the reason that the Treasurer of the Company requested such substitution for the purpose of absenting himself from the Island, as he immediately did; and that such substitution was made to last until the Treasurer should reassume the duties of his office, but that the said Treasurer has never tried since that time to reassume such duties, for which reason defendant had to continue acting as Treasurer.

The defendant denies the allegation that he did not pay over to

the complainant any amount beyond the loan of \$35,000, the fact being that he afterwards paid to complainant the sum of \$30,000 as part of the purchase price of the machinery sold by complainant to defendant; and he denies having spent any amount of money in complainant's business without the knowledge, consent or authority of its Board of Directors and without passing through the Treasury; and defendant further denies that the amounts expended were in excess of the expenditures authorized or contemplated by the Board of Directors, or that they were far more than warranted by 115 the financial condition of the company; and defendant further denies having expended any money without benefit or advantage to the complainant.

The defendant admits that after the making of the preliminary agreement between the Officers of complainant and defendant, he, the defendant, assumed the active and entire management and control of the complainant's business; but the defendant states the further fact that he was compelled to so assume control of said business for the reason that the said Central had been abandoned by Messrs. Cornwell and Pettingill, Vice-President and Treasurer of the Company, respectively, who absented themselves and went to the United States leaving in charge of the office at Mayaguez the bookkeeper, Mr. Eurípides Lugo, but without instructions and without funds to enable him to do anything beneficial to the interest of complainant and its creditors. That the defendant then assumed control of the abandoned Central for the purpose of keeping the same as a going concern thus protecting the interest of the Company and of its creditors, and that he assumed such management and control with the consent and authority of the Vice-President of the Company, Mr. F. L. Cornwell.

The defendant denies that his agents, or any of them, spread throughout the Community of Mayaguez the report alleged in the bill of complaint to have been spread by the agents of the defendant, to the effect that the defendant had been obliged to take over the Central on account of the inexperience, extravagance and incompetence of the President and Treasurer formerly in control of the affairs of the said company, that said officers had been removed and had no further connection with the Company, and that defendant had purchased the factory and machinery. And defendant states the fact to be that after he became President and assumed the man-

agement of the Central, when his agents tried to make contracts with the colonos, the said colonos refused to make any 116 contract, alleging that they did not wish to enter into any agreement to which Mr. Cornwell was a party, and then defendant's agents informed the said colonos, such being the fact, that Mr. Cornwell was no longer the President of the Central and that defendant was the new President and Manager of the said Central; and that that was the only manner in which defendant's agents were able to secure contracts with the colonos, who absolutely refused to negotiate or have any dealings with the former officers of the Central Altamaria.

The defendant denies that he has caused, any injury to the com-

plainant's business or that he has destroyed its credit as an entity; and defendant further denies that the said corporation had built up or enjoyed any credit, as an entity, in the community and with the colonos. And defendant states the fact to be that after he became President of the said Corporation and assumed its management, the said Corporation began to have credit in the community and with the colonos, who, up to that time, had refused to deal with the said Central on account of their distrust of the officers formerly in charge of the management of its affairs.

The defendant admits that he contracted for and purchased the machinery in his own name and had the same shipped to him individually and as consignee, and states that he did so in pursuance of the agreement between the defendant and the officers of complainant. And the defendant further states that he contracted for, purchased and shipped the said machinery not only because such was the agreement, but also because the manufacturers of the said machinery did not wish to negotiate with anyone else connected with the complainant company except the defendant; and that defendant bought the machinery in his own name so as to help

117 the Central to get the needed machinery in time for the grinding season. That after the said machinery was installed in the Central it was turned over by defendant to the complainant, who received the price thereof out of the amount of \$30,000 paid by him to the complainant.

The defendant does not recollect and has no knowledge or information as to whether any contracts were made by his agents for the grinding of canes in defendant's own name; but defendant denies having, in any instance, entered in the books of the Central the cane so bought in his name, if any was bought, as purchased at a higher price than that named in the contract with defendant; and he further denies having in any manner violated his duties to the complainant as its President and Managing Officer, and he also denies that he ever caused any financial injury to complainant. And defendant states as a fact that the reason why such contracts were made in defendant's individual name, if any were so made, was that the colonos refused to deal with the complainant and preferred to contract with defendant personally; and that all such contracts, if any, were turned over and assigned by defendant to the complainant under the same terms and conditions of the contracts.

The defendant denies that he was guilty of inexcusable or any extravagance in the work preparatory to the grinding season, and he further denies having expended large sums in excess of what was reasonably necessary; and defendant further denies that his management and direction of complainant's factory has been either extravagant or incompetent. And defendant states the fact that his administration was the most competent and beneficial to the Central.

118 the year of his management being the only one in the life of the said Central, in which, notwithstanding the many troubles, difficulties, scarcity of sucrose and the small amount of cane ground, all expenses were covered and a profit was obtained.

The defendant denies that he discharged the employee in charge of the sugar machinery department of the Central; and he also denies having left the said sugar making department in charge of persons inexperienced and without skill and that he continued as Chief Engineer an incompetent man; and the defendant states that the fact was that the man in charge of the sugar making department at the said Central, one Mr. Worth, required a salary so large that it could not be paid by the said Central, for which reason he voluntarily left the Central; and that defendant then employed a very competent man, at a much lower salary and who gave much better results than the said Mr. Worth. And the defendant further says that the man continued by him as the Chief Engineer, was a man known to him and who has demonstrated by his work to be entirely able and competent as a mechanical engineer and chemist.

The defendant denies that he has in any way mismanaged the service of cane by the railroad cars, and he further denies that during his management of the Central the colonos were unable to cut and haul cane with regularity. And the defendant also denies that during such time the service of cane was irregular, and that there were increased expenses in grinding and decreased results in sugar by reason of any acts on the part of the defendant herein.

The defendant admits that he absented himself from the Island, and states that the purpose of his said trip to the United States was to try to settle the claim of Messrs. Nevers & Callaghan against the Central Altagracia, Inc., the complainant herein; but the defendant denies that his absence lasted nearly two months and he further denies that the Manager in charge during his absence was left without authority or discretion and without funds.

119. The defendant denies that the small profit made by the Central during his management was due to any extravagance or incompetence in the management of the Central by the defendant.

The defendant admits that the amount of sugar produced during his management was less than the amount produced during the previous years of the existence of the Central; but the defendant states the fact that although the amount of sugar produced under his management was less than in the former years, all the expenses were covered and a profit made, whereas, during former years, although more sugar was produced, the results were large losses to the Central and no profits whatever. And the defendant further states the fact that the decrease in the production of sugar was due to the fact that the former managers of the Central had made contracts for small amounts of cane, with the exception of the contracts with the hacienda "Tula" and Javierre & Gil, and that the last named contract was lost in a litigation carried on by the former directors of the complainant; and that when defendant took over the management of the Central it was too late in the season to make contracts with colonos. And the defendant further states that another cause for the small production of sugar was the inability to get more cane on account of the great competition created by the Central's newly established in the District of Mayaguez.

The defendant denies that he allowed any of the existing cane con-

tracts to lapse and that he made no effort to extend those which have expired; and defendant states that he has made all the efforts necessary to renew the contracts with the complainant, but has been unable to obtain renewals on account of the bad treatment received by the colonos from the former Managers of the Central, which has made the said colonos distrustful and unwilling to contract with the complainant.

120 The defendant admits that several thousands of dollars were expended in the purchase of scales and that the said scales were erected at various places along the railroad; but defendant denies that the said expenditure resulted without benefit to the Central, and he further denies that he refused to pay for cane the competitive rates paid for other Centrals. And the defendant as a further answer says that the erection of such scales became necessary in order to compete with other Centrals which had established such scales along the railroad and that the erection of such scales was required by the colonos; and the defendant further states that such scales were erected with the approval and aid of the Vice-President of the Company, Mr. F. L. Cornwell.

The defendant admits that on one occasion a lot of cane was purchased upon which there was loss; but defendant states that the price paid for such cane was the same as offered for the same cane by the Guánica Centrale. The defendant denies that he has purchased in his own name any of the indebtedness of the complainant, since occupying the office of President of the Company; and defendant states the fact to be that the said indebtedness was so purchased by him before his selection as President, and that he did purchase the said indebtedness at the request of the then President and the Treasurer of the Company and with their knowledge, for the purpose of avoiding litigation against the complainant and in order to keep the Central as a going concern.

The defendant admits that while he was in control and possession of the books and accounts of the complainant he made an offer of sixty cents on the dollar of the par value of complainant's capital stock for a controlling interest therein; but defendant states that his said offer was made without having carefully examined each one of the entries in the said books and accounts, and relying entirely upon the statements and representations made to defendant by the holders of the said stock (who were also officers of the Company) which statements and representations proved to be false and fraudulent; and that after making a careful examination of the said books and accounts the defendant formed the opinion that the said stock was and is worth practically nothing.

The defendant denies the allegation that he did nothing to avoid the execution and levy upon the properties of the complainant corporation for the collection of the judgment recovered by Nevers & Callaghan in their suit against the said Company, the fact being that defendant made a trip to the United States for the purpose of avoiding the said litigation and that later he applied to this Court for the appointment of a Receiver among other things for the purpose of avoiding a sale of the properties under the execution and levy

of the said Nevers & Callaghan. The defendant states that he could not pay to himself the interest due to him under the contract of the conditional sale between him and the complainant, for the reason that there were no funds out of which to pay the said interest; and that there were not funds with which to pay the advances to the colonos and the salaries of the officers of the Company.

The defendant denies that the transactions between the defendant and the complainant, represented by its Directors, constituted a loan from the defendant to the said Corporation, the fact being, as it conclusively appears from the terms of the deeds executed between the said parties, that the transaction was in fact an absolute sale of the properties to the defendant by the complainant and then a conditional sale from the defendant to the complainant; and the defendant further denies that the said document was executed in favor of defendant solely and only for the purpose of aiding defendant in his endeavor to obtain refraccion security for his loan, the true fact being that it was the clear and express intention and design of the parties to the said contract that the title to the said properties should pass from complainant to defendant.

122 The defendant denies that he made any loan to the complainant and he further denies having demanded and obtained from the complainant an usurious rate of interest; and the defendant further denies that the salary and stock compensation to be received by the defendant were used as a disguise for the payment of usurious interest; and the defendant denies that any of the contracts under which he claims possession and ownership of the properties of the Central is usurious.

As a further answer to the said bill of complaint is not entitled to any of the different kinds of reliefs prayed for in its said bill.

Wherefore the defendant respectfully prays that the said bill be dismissed with defendant's costs.

(Signed) *JOSÉ DE DIEGO.*
(Signed) *MARTÍN TRAVIESO, JR.,*
Solicitor for Defendant.
(Signed) *R. VALDÉS, Defendant.*

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Cross-bill.

The Cross Bill of Ramón Valdés, One of the Defendants, to the Bill of Complaint of Central Altagracia, Inc.

To the Honorable Bernard S. Rodey, Judge of the United States District Court for Porto Rico:

Ramón Valdés, a subject of the King of Spain, residing in Porto Rico, one of the defendants in the above consolidated actions, brings this his cross bill herein against the plaintiff Central Altagracia and against the other defendants Nevers & Callaghan, and respectfully represents to this Honorable Court as follows:—

I.

That heretofore, to wit: on or about the 11th day of April, 1907, by a public instrument executed in the City of San Juan, Porto Rico, before the Notary Public, Francisco de la Torre y Garrido, a contract was made between the defendant Ramón Valdés and the Central Altgracia represented by its Secretary and Treasurer, Mr. N. B. K. Pettingill, who was duly authorized for the execution of the said instrument by a resolution passed by the Board of Directors of the said Corporation, being in need of a certain amount of money, agreed to make and did make a conditional sale of the machinery and apparatus described in the said instrument to the defendant Ramón Valdés. That the said conditional sale was made for the amount of Thirty-five Thousand (\$35,000.) Dollars, of which sum the representative of the Central Altgracia, Inc. acknowledged to have received to his entire satisfaction the sum of \$25,100 prior to the execution of the deed, leaving the balance subject to the order of the vendor corporation. By the terms of the said deed the said sale was to be consummated in favor of the purchaser Ramón Valdés upon the expiration of the first day of April, 1908.

II.

That before the expiration of the 1st day of April, 1908, which was the date fixed for the consummation of the conditional sale, to wit: on the 28th day of October, 1907, and by a public instrument executed before Augustine P. Barranco, a Notary Public in and for the County of Kings, State of New York, the Central Altgracia Incorporated, represented by its President, F. L. Cornwell (who was duly authorized by a resolution of the stockholders of the said corporation passed at the stockholders' meeting held on the 24th of October, 1907) entered into a contract with the defendant Ramón Valdés, whereby the said Corporation sold, assigned and transferred to the said Ramón Valdés, who accepted such sale assignment and transfer, a contract of lease and all other rights which the Company acquired from Salvador and Gerardo Castelló, and which were the same lease and rights acquired by the said Castelló from Don Joaquin Sanchez de Larrageiti; and the said Company further sold, assigned and transferred to the defendant herein, each and every right appertaining to the Company in and to the machinery, utensils and appurtenances existing in the properties of the Central Altgracia at the time that the said lease was assigned to the Company, as well as such rights as the Company has in and to the machinery, utensils and appurtenances installed by it thereafter on the said properties. The consideration for such sale was the sum of \$65,000. American gold, which the Company acknowledged to have already received from defendant Valdés as follows: \$35,000 which the Company had received by virtue of the instrument dated April 11th, 1907, already described; and the balance of \$30,000 which the Company received afterwards in cash from the defendant Valdés. By the said instrument of October 28, 1907, the instrument of April 11, 1907, 125 was declared cancelled by the new contract. The contract of lease and other properties sold, assigned and transferred by

the Altagracia Central Inc. to the defendant Valdés, as well as the contract of April 11, 1907, are fully described in the said instrument of October 28, 1907, a copy of which is hereto annexed and marked "Exhibit A."

III.

That after becoming the absolute owner of the contract of lease and other properties sold, assigned and transferred to him by the Central Altagracia Inc. by the deed dated October 28, 1907, to wit: on the 2nd day of November, 1907, and by an instrument executed before the Notary Public, Joseph A. Carras, the defendant and the said Central Altagracia Inc. represented by its President, F. L. Cornwell (who was fully authorized for such purpose by the resolution passed by the stockholders of the said Corporation at a meeting held on the 30th day of October, 1907) entered into a contract of conditional sale at the City of New York, U. S. A., by virtue of which contract the defendant Ramón Valdés conditionally sold, assigned and transferred to the Central Altagracia, Inc. the contract of lease and other rights which he acquired from the Central Altagracia Inc. by the deed of October 28, 1907, and also all the rights of the said defendant in and to the machinery, tools and appurtenances existing in the said properties of the Central Altagracia, and which the said Company sold to defendant Valdés by the same deed of October 28, 1907.

IV.

That in and by the terms of the aforesaid contract of November 2, 1907, it was expressly provided that the title in and to the aforesaid lease and machinery should not pass and be conveyed and transferred to the Central Altagracia, Incorporated, but should belong to and remain in Ramón Valdés, the defendant herein, until the said Central Altagracia, Inc., had fully complied with and performed certain conditions upon it imposed by the said contract. That among 126 the said conditions was the payment of the full amount of the purchase price of the said lease and the said machinery, and which amount was the sum of Sixty-five Thousand Dollars, payable in four equal installments, due, respectively, on the first day of April of each of the years 1908, 1909, 1910 and 1911, together with interest at the rate of 10% per annum, on all deferred payments and which interest was payable every six months, and to be compound at such times if not paid.

V.

That it was further provided by the terms of the aforesaid contract that should the Central be unable to pay any of the aforesaid installments when due, the said Ramón Valdés, defendant herein, would be obliged to extend the time for the payment of the said installment for the further term of one year; provided, however, that the interest due on account of the total sum then owing by the Central Altagracia, Inc., as aforesaid, should be or was paid.

VI.

That it was further provided by the terms of the aforesaid contract that should the Central Altagracia fail to keep and observe any of the conditions by it to be kept and observed, according to the terms of the said contract, and especially should the said corporation make default in the payment of interest when due, or any of said installments when due, then the said Ramón Valdés, the defendant herein, would immediately and *ipso facto* be entitled to re-enter into and take possession of the said factory and the said premises and the said machinery, and the said contract of lease, as the true, lawful and exclusive owner of the same.

VII.

That by virtue of the said contract of November, 1907, the said Central Altagracia went into possession of the said premises and factory and took possession of the said machinery and said contract of lease, and still continues to occupy and hold the same.

VIII.

That according to the terms of the said contract there became due on the first day of April, 1908, the first of the installments above mentioned, amounting to \$16,250.00; and that on the first day of April, 1909, there became due the second of the said installments amounting also to the sum of \$16,250.00, together also with the interest aforesaid on the total sum of \$65,000.00 from the date of the aforesaid contract; but that the said Central Altagracia, Inc., has failed to pay all, or any part, of the said installments, or of said interest.

IX.

That by the terms of the said contract the defendant herein is entitled to the immediate possession of the said premises, factory, machinery and lease, but that the said Central Altagracia, Inc., continues in possession of the same without the permission and without the will of the defendant herein, and refuse to deliver to him possession of the said premises, factory, machinery and lease after default in the payment of the interest and the first two installments as aforesaid; and that the defendant herein on the date of the said contract of conditional sale was, and now is, the sole and exclusive owner of the said lease and the machinery mentioned in the said contract and is now entitled to the possession of the premises, factory, machinery and lease aforesaid; and that heretofore, to wit: on the second day of June, 1908, the defendant herein demanded of the said Central Altagracia, Inc., the possession of the said factory, premises, machinery and lease, but the said corporation refused to deliver the same to the defendant, in violation of the express terms of the contract.

That the said Central Altagracia, by its bill of complaint herein, claims that the said contracts of October 28, 1907 and November 2,

1907, should be decreed to constitute a loan of money and not a sale of property; and that the said Central Altagracia is now seeking to avoid the legal effect of the aforesaid contracts by claiming that such contracts, which by their express terms are an absolute sale and a conditional sale of property, respectively, are loans of money and not what they purport to be by their express term. And the defendant further alleges that to hold that such contracts are mere loans of money, would deprive the said defendant of the property which he legally acquired under and by virtue of the express and unqualified terms of the said contracts, and would convert the said defendant into a general creditor of an insolvent corporation.

XL.

That on the 16th day of May, 1908, judgment was rendered by this Honorable Court against the said Central Altagracia, Inc. and in favor of the firm of Nevers and Callaghan for a large sum of money then due and owing by the said Corporation to the said firm. That thereafter the execution was issued on the aforesaid judgment and a levy was made by the Marshal of this Court, in pursuance of said Writ, on the aforesaid factory and machinery on or about the 27th day of May, 1908, and that the said Marshal now threatens to sell the said factory and machinery in satisfaction of the said judgment. And the defendant further states that the said levy so made by the Marshal of this Court, as aforesaid, was illegally made for the reason that the said properties did not on the date of the said levy belong to nor were the property of the Central Altagracia, Inc., the debtor of the judgment in favor of Nevers & Callaghan, but were and now are the property of the defendant herein, according to the express terms and conditions of the 129 contract of conditional sale of November 2, 1907.

Wherefore the defendant respectfully prays that the said contract of October 28 and November 2, 1907 be held and decreed to be valid and subsisting obligations and binding upon the corporation Central Altagracia, Inc., inasmuch as the said contracts were expressly authorized by resolutions duly passed by the stockholders of the said Corporation.

The defendant further prays judgment:

1st. For the sum of Ten Thousand Dollars (\$10,000) damages for the detention of the said premises;

2nd. That the Receiver of this Honorable Court and the said Central Altagracia, Inc., be ordered to turn over to the defendant herein the possession of the said lease, premises, factory and machinery;

3rd. That the attachment of the said properties made by the Marshal of this Court in the execution of the judgment in favor of Nevers & Callaghan be vacated and the said properties be declared free from the lien thereof; and that the said defendant Nevers & Callaghan may be enjoined from enforcing the execution upon their judgment against the said property of the defendant Ramon Valdes;

4th. For the cost of the suit.

And that the defendant may have such other and further relief

in the premises as equity may require and to your Honor may seem meet.

And may it please your Honor to grant unto this defendant a writ of subpoena directed to the said complainant Central Altagracia, Inc. and to the defendants Nevers & Callaghan and to the members of the said firm George C. Nevers, George B. Ackerson and James G. Callaghan, as co-partners, commanding them at a certain time and under a certain penalty therein to be limited, personally to be and appear before this Honorable Court, then and there 130 to answer to this defendant's cross bill (but not under oath, the benefit thereof being hereby expressly waived) and to stand to, perform and abide by such further orders, directions and decrees as to your Honor shall seem meet in the premises.

And your petitioner defendant shall ever pray.

(Signed)

(Signed)

JOSÉ DE DIEGO

MARTIN TRAVIESO, JR.,

Solicitors for Defendant Ramon Valdes.

UNITED STATES OF AMERICA,

District of Porto Rico, ss:

Ramón Valdés y Cobián, being first duly sworn, says that he is the defendant mentioned in the foregoing answer and cross bill; that he has read the said answer and also the said cross bill and knows the contents thereof, and that the contents and statements of both are true of his own knowledge, except as to the matters alleged on information and belief, and that as to those matters he believes them to be true.

(Signed)
No. —.

R. VALDÉS.

Sworn and subscribed to before me by Ramón Valdés y Cobián, of full age, married and to me personally known, this 17th day of July, A. D. 1909.

(Signed)

JOHN L. GAY, Clerk.
By RICARDO NADAL, Dep'y.

131. District Court of the United States for the District of Porto Rico.

CENTRAL ALTAGRACIA, INC., Plaintiff,

vs.

RAMON VALDES and NEVERS & CALLAGHAN, Defendants.

Affidavit.

Before me, Jno. L. Gay, Clerk of the United States District Court for the District of Porto Rico, personally appeared, N. B. K. Pettingill, Treasurer of Central Altagracia Incorporated, who being duly sworn deposes and says:

I.

That affiant is Treasurer of Plaintiff Corporation and one of the counsel of Record.

II.

That affiant is personally acquainted with the facts in the above entitled cause and said Plaintiff Corporation cannot safely proceed to the trial of this cause at this time for the want of the testimony of Geo. C. Lilley, Philadelphia, Pa.; E. C. Deming, New York, N. Y.; F. K. Curtis, New York, N. Y.; E. Lazo-Arrillaga, New York, N. Y.; Jno. S. Fiske, New York, N. Y.; Wm. V. Rowe, New York, N. Y.; Jno. Wirth, New Orleans, La.; Geo. L. Strong, New York, N. Y.; Mngr. Foreign Dept. Sov. Bank of Canada, New York, N. Y.

III.

Affiant verily believes this cause cannot be tried with justice to Plaintiff Corporation without the testimony of all and each 132 of the aforesaid witnesses.

IV.

That all the aforesaid named persons are material witnesses on the part of Plaintiff Corporation and that the testimony of all and each of said witnesses is material, competent and necessary to the establishing of Plaintiff Corporation's claim.

V.

That Plaintiff Corporation expect to prove by said Geo. C. Lilley, that defendant Ramón Valdés entered into a contract with Lillie Evaporating Co. personally for all the purchase of machinery for Central Altamira and for the making of certain improvements in Central Altamira, and that said contract was entered into by and between Ramón Valdés and Lillie Evaporating Co. and that said machinery was shipped to said Ramón Valdés personally and that one thousand dollars of said contract price was never paid by said Valdés and was foreseen by said Lillie Evaporating Co. That in carrying on negotiations for the making of said contract, said Valdés held himself out to be the owner of said factory known as Central Altamira.

VI.

That Plaintiff Corporation expects to prove by E. C. Deming, that said Ramón Valdés contracted with said Deming for large amount of machinery in his personal name and that said Valdés did not pay said Deming the full amount of said contract price, nor the amount that said Valdés has charged up to Plaintiff Corporation. That said Valdés held himself out at the time of making said contract as the owner in fact of said sugar factory.

VII.

Plaintiff Corporation expects to prove by F. K. Curtis, that he acted as Counsel for Plaintiff Corporation and Ramón Valdés in

133 said \$65,000.00 transaction. That no money was in fact paid at the time of entering into said contract. That defendant Valdés agreed to finance Plaintiff Corporation, and that for and in consideration of his entering into said contract he was made President of Plaintiff Corporation, and given active control of said Corporation. That said Valdés received a bonus of \$15,000.00 in stock of Plaintiff Corporation, and that said contract was made in the form of sale and resale for the reason that the Laws of Porto Rico did not provide for the mortgaging of personal property.

VIII.

That Plaintiff Corporation expects to prove by Lazo-Arrillaga, that he was connected with F. K. Curtis and attended to the drawing of the papers in the said \$65,000.00 transaction. That \$15,000.00 in stock of Plaintiff Corporation were given Valdés as bonus for agreeing to said loan. That said Valdés was made President as part of consideration of said loan. That said Valdés agreed to finance Plaintiff Corporation.

IX.

That Plaintiff Corporation expects to prove by Wm. V. Rowe that said defendant Valdés in October, 1907, offered \$50,000 per share and interest for 350 shares of stock of Plaintiff Corporation held by said Rowe as Assignee of J. M. Ceballos & Co. and that said Valdés further offered to pay account due J. M. Ceballos & Co. only asking for extension of time for payment of same.

X.

That affiant expects to prove by Jno. Wirth that said Valdés mis-spent large sums of money at the beginning of the 1907-1908 grinding season—was inexcusably extravagant in the work preparatory of the grinding season; refused to properly run fabrication department and by arbitrary orders and directions caused said factory to lose large and important sums of money on cane, when by proper use of machinery and competent direction said factory would have shown large profits from its sugar making.

XI.

134 That affiant expects to prove by Geo. L. Strong and Jno. S. Fiske, that said Valdés told said Strong and Fiske in October, 1907, that he was willing to pay fifty-five and interest for stock in Plaintiff Corporation, and that with him (the said Valdés) financing the mill, he would soon attend to all its debts and obligations, and all that was needed was time, that under the said Valdés management, the mill would have an abundance of cane and credit.

XII.

That the affiant expects to prove by the Manager of the Foreign Department of the Sovereign Bank of Canada, that said Valdés pur-

chased over Twenty Thousand Dollars of credits of Plaintiff Corporation while President of same at a little over fifty cents on the dollar.

XIII.

Affiant states that it is absolutely necessary to sue out a commission to take the deposition of all the aforesaid witnesses in accordance with the Chancery practise and the Rules of this Court, as their testimony is absolutely necessary to the proper prosecution of Plaintiff Corporation's bill in Equity.

(Signed)

N. B. K. PETTINGILL.

Subscribed and sworn to before me on this 27th day of July, 1909, in the Municipality of Mayaguez, Porto Rico.

(Signed)

JOHN L. GAY,

Clerk of the U. S. District Court,

By RICARDO NADAL, Dep'y.

[Endorsed:] United States District Court for Porto Rico. Equity
565. Central Altamaria Inc. vs. Ramon Valdés, et al. Affidavit of
N. B. K. Pettingill.

135 Nos. 564 and 565 San Juan.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC.,

and

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS AND CALLAGHAM,

Consolidated.

Now comes Ramón Valdés, by his Attorney of record Martín Trávieso and José de Diego and files answer and Cross-Bill herein.

136 Affidavit filed July 27 '09.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS et al.

Now comes N. B. K. Pettingill, Solicitor of record for Complainant, Central Altamaria, Incorporated, and files Affidavit herein.

Equity. 203. Mayaguez.

SALVADOR CASTELLÓ et al.

vs.

CENTRAL ALTAGRACIA, INC.

Now comes, Central Altamaria, Incorporated, Respondent herein, and files Answer by F. L. Cornwell, of Counsel for said Respondent.

Nos. 564 and 565. San Juan.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, INC.,

and

CENTRAL ALTAGRACIA, INC.,
vs.
RAMÓN VALDÉS et al.

Consolidated.

Comes now N. B. K. Pettingill of counsel for the Respondent in suit No. 564 and for Complainant in suit No. 565, and files an Affidavit in the above consolidated causes setting forth the necessity for taking the deposition of one Geo. C. Lilley, E. C. Deming, and some others in the cities of Philadelphia and New York, and setting forth in substance what he expects to prove by said witnesses and asserting that complainant in suit No. 565 cannot fairly go to trial without the evidence of such witnesses before the Court, and he therefore requests that the matter be postponed to give Complainant in suit No. 565 an opportunity to take the depositions of such witnesses. And the Court hears him in that behalf at length and hears

Counsel for all the opposing parties, Messrs. Martin Travieso, 137 and José de Diego for the Respondent and F. H. Dexter and

B. J. Horton for Nevers and Calligham, and being fully advised, states to said Counsel for Complainant in suit No. 565 that the matter has been pending for more than a year and that Counsel had full notice of the Court's intention to press the matter to issue and trial, and that it is not disposed to delay matters at this time when the admissions of the pleadings are so broad that the proofs available here in Porto Rico are probably sufficient, and that the Amended Complaint already on file in suit No. 565 and the answer thereto and the Answer recently filed in suit No. 564, as well as the Cross-Bill also recently filed in suit No. 565 make as many allegations and admissions, as that the real issue between the parties can be plainly seen, and that in the opinion of the Court enough proof is available here in Porto Rico, and Complainant in suit No. 565, if it sees fit, may file exceptions to the Answer and an answer to the cross-bill, but that in the opinion of the Court, the same would be mere formalities, as the opposite pleadings of each of the parties in said causes reduces the issues almost entirely to questions of law, and hence the Court requires that the causes proceed and gives the said Complainant in suit No. 565 until to-morrow morning within which to file his Exceptions to the answer and his answer to the cross-bill in said suit, if he shall choose so to do, and informs him that he may consider the same as filed and file the same in writing at any time before the end of the trial, if he so desires, and that if it shall

appear after Complainant makes its case or even at any time before the close of the case, that Counsel's statement is well founded, that the absence of the witnesses named does in fact prejudice his client, the Court will hear his Application to have such depositions taken.

Now comes H. H. Scoville, Receiver herein, and files his final Report.

138 *The Answer of Ramon Valdes, Complainant, to the Cross-Bill of Nevers & Callaghan, Defendants.*

(Filed July 28, 1909.)

Equity. No. 565.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMON VALDÉS and NEVERS & CALLAGHAN,

and

Equity. No. 564.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

The complainant Ramon Valdés, now and at all times hereafter, saving to himself all and all manner of benefit of exceptions, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the Cross-Bill of the defendants Nevers & Callaghan herein filed, for answer thereto or to so much thereof as the said complainant is advised it is material or necessary for him to make answer to, answering says:

First. The complainant admits the allegations contained in paragraphs I, II, and III of the said cross bill.

Second. The complainant denies that the purpose and object of the contract of sale of October 28, 1907, was only to secure to the complainant the payment of the sum of \$65,000 due to him by the Central Altagracia, Inc.; and complainant states the fact that the deed of October 28 was an absolute sale of the properties therein described by the said Central to this complainant. And the complainant further denies that at the time of such sale the machineries of the said Central were worth the sum of (\$300,000) three hundred thousand dollars. And the complainant denies the allegation of paragraph IV of the said cross bill that there was

an agreement or understanding and agreement between complainant and the Central Altagracia that the contract of sale aforesaid was to be in the nature of a security only; and the complainant denies that the deed of conditional sale was executed to carry out such alleged purpose.

Third. The complainant denies each and all of the allegations contained in paragraph V of the said cross bill; and the complainant specifically denies that the action of complainant and the said Central constitutes a fraud upon any of the creditors of the said Central, the fact being that such sale was made bona fides and for a good, real and valuable consideration.

Fourth. The complainant denies the allegations contained in paragraphs VI and VII of the said cross-bill.

Fifth. The complainant denies that the properties involved in the said contracts amount in value to nearly half a million dollars as alleged in paragraph VIII of the cross bill; and he further denies the allegation that he is a mere general creditor of the Central and that his claim is fictitious and padded with usurious interest. And complainant states that he is the sole and true owner of the properties sold to him by virtue of the aforesaid contract of October 28, 1907. And the complainant denies every other material allegation in the said cross bill contained, which is not expressly admitted or denied.

Wherefore, the complainant respectfully prays that the said cross bill be dismissed, with this complainant's costs most wrongfully sustained.

(Signed)

MARTIN TRAVIESO, JR.,
Solicitor for R. Valdes.

140 In the District Court of the United States for Porto Rico.

The Altagracia Cases, Particularly Nos. 564 and 565.

Memorandum for the Files.

On this 28th day of July, 1909, in open court at Mayaguez, Porto Rico, the Court makes the following statement in the hearing of counsel in the above entitled causes, there being present Messrs. N. B. K. Pettingill, Frederick L. Cornwell, Francis H. Dexter, Martin Travieso, José de Diego and Benjamin J. Horton.

That the property in question has been in the hands of a Receiver for more than a year last past, and which receivership was applied for in suits No. 564 and 565. That the management under the receivership has resulted in a loss of many thousand of dollars. That for several months last past the Court and all counsel have been aware of this fact and that all counsel have been aware of the Court's anxiety to dispose of the litigation. That recently within fifteen days last past, a conference was held between the Court and all counsel regarding the best thing to be done under the circumstances, and a few days thereafter the Court sent to the files its conclusions in that regard, and in accordance with the views therein expressed, the demurrers in the several cases were overruled, save as stated, and the bill was amended in No. 565 and an answer and cross-bill filed therein and an answer was filed in suit No. 564. Nevins & Callaghan also, by permission, became parties to suit No. 564 and filed an answer and cross-bill in both No. 564 and 565.

The matter having been set down for hearing before the Court without the intervention of an examiner or master for Tuesday morning, July 27th, counsel for the Central Altagracia in suit No. 565 came in and filed an affidavit setting forth the necessity for the taking of the deposition of several witnesses in New York and other places and request time in which to do so. Such request was opposed by all other counsel in the case. Thereupon said counsel for the Central Altagracia stated that he desired time to file exceptions to the answer and an answer to the cross-bill in suit No. 141 565. The Court granted him until this morning, July 28th, to do so.

During the evening one of the counsel, Martin Travieso, for the respondent Ramon Valdes, requested the Court to postpone the hearing until Thursday morning, the 29th instant, as he was obliged to go to San Juan today. Consultation between the Court and counsel resulted in our coming to the court house last evening. When we arrived there it was ascertained that Mr. Travieso, the counsel who desired to go to San Juan, had received a telegram making it unnecessary for him to go. Thereupon Messrs. Pettingill & Cornwall, attorneys for the Central Altagracia, stated that they withdrew any statement they may have heretofore made in the cause in that regard and desired it to be understood that they would not except to the answer in suit No. 565 or plead or answer to the cross-bill therein save and except within the time which they contended the rules governing this court of equity give them, and would stand upon what they consider their rights in that regard.

The Court thereupon announced if such was their determination, the Court would proceed in the absence of such pleadings on the bills and answers this morning with the hearing of the case.

And now, on this 28th day of July, 1909, all of said counsel as aforesaid being present, and the foregoing statement having been read in their hearing, N. B. K. Pettingill, counsel for the Central Altagracia, in response to the same stated that he objected to proceeding to take any evidence in any of the causes at this time or the testimony of any witnesses because the same are not at issue or in condition for the taking of evidence, and objected to the taking of any such evidence until the issues in said causes are made up in accordance with the rules of practice applicable to equity causes.

Which objection was overruled by the Court on the ground that the action called for thereby is not necessary; that the bill was amended within three days last past and answer was immediately filed to it and a cross-bill also filed, the said cross-bill making only the same claims as were made in suit No. 563 at law, and that anyway the issues could be tried on the bills and answers in both suits, and that if it should develop any time during the trial that the evidence of any of the witnesses mentioned was necessary, the 142 Court could, if necessary, grant time later to take such depositions.

To which ruling of the Court, counsel for the Central Altagracia excepted, and stated that in pursuance of the position taken, he was not ready to proceed with the taking of evidence. But the Court

proceeded with the trial, the Stenographer having complete note of all that took place.

(Signed)

B. S. RODEY, Judge.

143 *The Replication of Ramon Valdes, Plaintiff, to the Answer
Central Altagracia, Inc.*

(Filed July 28, 1909.)

In Equity. No. 565.

CENTRAL ALTAGRACIA, INC., Complainant,
vs.
RAMÓN VALDÉS and NEVERS & CALLAGHAN, Defendants.

and

In Equity. No. 564.
RAMÓN VALDÉS, Complainant,
vs.
CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN, Defendants
Replication.

The replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto, says that he does and will ever maintain and prove his said bill to be true, certain and sufficient in law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant, without that that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct humbly as in and by his said bill he has already prayed.

(Signed)

MARTIN TRAVIESO, JR.,
Solicitors for Plaintiff.

144-148 *The Replication of Ramon Valdes to the Answer of Nevers & Callaghan.*

(Filed July 28, 1909.)

Equity. 565.

CENTRAL ALTAGRACIA, INCORPORATED,
vs.
RAMÓN VALDÉS & NEVERS & CALLAGHAN.

and

Equity. 564.

RAMÓN VALDÉS
vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

The replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants Nevers & Callaghan, for replication thereunto, says that he does and will ever maintain and prove his said bill to be true, certain and sufficient in law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied to by this replicant, without that that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct, humbly as in and by his said bill he has already prayed.

(Signed)

MARTIN TRAVIESO, JR.,
Solicitors for Plaintiff, Ramón Valdés.

149 On Wednesday the 28th day of July, 1909, among the proceedings had were the following, to-wit:

Nos. 564 and 565. San Juan.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC.,

and

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS et al.

Consolidated.

Now comes F. H. Dexter, of Counsel for Nevers and Callaghan defendants in both of the above entitled suits and with leave of the Court first had amends the Answer and Cross-Bill by them filed to the Cross-Bill of Ramón Valdés in these same two consolidated suits, by adding on the second page thereof and at the end of Paragraph II, after the word "litigation" the following words, to-wit: "That on the 27th day of May, 1908, execution was issued upon the said judgment, out of this Court, and that on the 29th day of May, 1908, the same was levied by the Marshal of this Court upon all the machinery within the factory building of the said Central Altagracia, Incorporated, near Mayaguez, Porto Rico, by posting a like copy of the said Execution, together with a copy of the notice of the said levy, at the entrance of the said factory building, leaving the said machinery in the custody of J. Sifre, Manager.

Now comes Ramón Valdés, by his Solicitor, Martin Travieso and José de Diego, and files the following papers, to-wit:

Answers of Ramón Valdés to Cross-Bill of Nevers and Callaghan.

Replication of Ramón Valdés to the Answer of Central Altagracia, Inc.

The above consolidated causes come on for hearing before the Court without the intervention of an Examiner or Master and 150 the Complainant Central Altagracia, Incorporated, by its Counsel N. B. K. Pettingill and F. L. Cornwell, although present in open Court refusing to file any exceptions to the answer or any answer to the Cross-Bill in suit No. 565 aforesaid, and protesting that they do not desire to proceed with the taking of testimony before said issues are made up and that they desire their full time which they allege they are entitled to under the rules within which to file the same, and the Court having heard Counsel for all parties in that regard, and considering that the issues are sufficiently made up as the pleadings now stand, to enable the Court to do so, announces that it will proceed, even through Counsel re-

fuse to file such additional pleadings and the Court in that behalf makes a statement which the stenographer notes out and it is put in the files, Wherein all Counsel concerned can see it.

And thereupon the Court proceeds with the trial and the Complainant the Central Altamaria, Incorporated, by its said counsel refusing to proceed, the Court hears evidence for the respondents Nevers and Callaghan, and also evidence for the respondent Ramón Valdés, and the cause *not* being finished at the adjournment hour, the hearing is continued until to-morrow morning at ten o'clock, it being announced several times during the day by the Court that Complainant Central Altamaria has the right if it chooses to now cross-examine these witnesses or to at any time before the case is closed, *to come in* and make proof of the allegations of its bill in so far as the said allegations may not be admitted by the respondents while introducing their testimony, and may also make any proper proofs in the case they desire *in* or before the closing of the same, but that the Court will not further delay the taking of the testimony as it feels that the issues are sufficiently before it, and the proofs necessary under the same are easily obtainable by all the parties, proceedings were had the following, *to-wit*:

151 On Thursday the 29th day of July 1909, among the proceedings were had the following, *to-wit*:

564. San Juan.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, INC.,

Consolidated.

and

565. San Juan.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMÓN VALDÉS et al.

Consolidated.

The hearing of this cause is proceeded with, and the Court hears further testimony on behalf of Ramón Valdés, present in his own proper person and by his solicitors of record, Messrs. José de Diego and Martin Travieso and Benjamin J. Horton of Counsel for Nevers and Callaghan being also present.

The testimony in this behalf not being finished, the Court on motion of Martin Travieso, of Counsel for Ramón Valdés, and B. J. Horton of counsel for Nevers and Callaghan not objecting thereto, adjourns the further hearing of this cause for next Monday, August 2nd 1909, at San Juan.

152

Journal Entry.

August 2, 1909.

564. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INCORPORATED,

and

565. Equity.

CENTRAL ALTAGRACIA, INCORPORATED,

vs.

RAMON VALDÉS.

And now on this day in accordance with an order to that effect entered in open court at Mayaguez before the recent adjournment in that Division, the hearing in the above consolidated causes is proceeded with here in the San Juan Division. There are present Messrs. B. J. Horton and F. H. Dexter representing the respondents Nevers & Callaghan, and the said Dexter also incidentally looking after the interests of the Sanchez de Larragoiti heirs. There are also present Martin Travieso of counsel for Ramon Valdes and H. H. Scoville, receiver in the said consolidated causes. And there is also present N. B. K. Pettingill of counsel for the Central Altagracia, although he takes no part in the proceedings save to testify as a witness under subpoena issued for him by counsel for Nevers & Callaghan.

And thereupon the Court receives divers exhibits, and examines the same, offered by the different parties, and also hears the statements and testimony of Edward E. Saldaña, Ramón Valdés, H. H. Scoville, the Receiver, and Mr. Lugo. And the hearing not having been finished at the adjournment hour, it is continued until tomorrow morning, Tuesday, August the 3rd, at 10 o'clock A. M.

153

Journal Entry.

August 3, 1909.

564. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INCORPORATED,

and

565. Equity.

CENTRAL ALTAGRACIA, INCORPORATED,

vs.

RAMÓN VALDÉS.

The hearing in these consolidated causes is proceeded with as per the order adjourning the same on yesterday, Messrs. Horton, Dexter, Scoville, Travieso, and Pettingill being present as before, the said Pettingill taking no part as counsel in the proceeding, although he testifies at length. During the proceeding F. H. Dexter tenders and offers to file "a plea of intervention," on behalf of the Sucesión Joaquin Sanchez de Larragoiti, the receipt of which is objected to by counsel for Ramón Valdés. The Court hears counsel pro and con in that regard, and being fully advised refuses to permit the said "plea of intervention" to be filed, and instructs the Clerk to mark the same "tendered" only, it being refused on the ground that the Court itself can and will protect the rights of the said Sucesion of its own motion, and on the further ground that the Court has already passed upon the right of the said Sucesion to intervene herein,—its action in that regard being now pending before the Honorable the Supreme Court of the United States. Thereupon the Court receives additional exhibits and hears additional testimony in the said consolidated causes, and the same not being ended at the adjournment hour, the hearing is continued over until tomorrow, Wednesday the 4th at 2 o'clock P. M.

154

Journal Entry.

August 4, 1909.

564. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INCORPORATED,

and

565. Equity.

CENTRAL ALTAGRACIA, INCORPORATED,

vs.

RAMÓN VALDÉS.

The hearing in these consolidated causes is proceeded with as on yesterday. Messrs. Travieso, Horton, Dexter and Pettingill being present as before, the said Pettingill as heretofore taking no part in the proceedings. The Court receives additional testimony and thereafter hears Martin Travieso on behalf of Ramón Valdés at length upon the merits, as also Messrs. F. H. Dexter and B. J. Horton in reply thereto, and on behalf of Nevers & Callaghan, and the said Dexter incidentally on behalf of the Sucesion Sanchez de Laragoiti, and the said Travieso in a closing argument in the premises. At the end of the argument it is agreed that the respective parties shall file memorandum briefs on or before the 11th instant. During the proceeding Martin Travieso presented, at the request of the Court, on behalf of Ramón Valdés, a statement showing all the money his said client has paid out on any account whatsoever in or about the Central Altgracia, but on examination thereof, the Court returns the same to him, with the request that the same be amended and refiled so as to — the actual sum paid for as well as the face value of all stocks, debts, and claims of or against the Central Altgracia purchased, paid for, or now held or owned by said Ramón Valdés.

The same will be hereafter received when presented. To 155 which action of the Court in so agreeing to receive such statement, Nevers & Callaghan by their counsel, then and there duly object and except. The Court announces that it reserves the right to at any time before final decree in this cause, call for any additional testimony it may think necessary on examination of the record, or to take any other action it may deem proper, and requests Martin Travieso on behalf of Mr. Valdes, and Messrs. Horton and Dexter on behalf of Nevers & Callaghan to produce and file, if they find the same, the original so-called preliminary agreement said to have been entered into between the Central Altgracia and Ramón Valdes, and often referred to in the evidence in this cause, now supposed to be in the offices of Messrs. Curtiss and Mallet-Prevost in the City of New York.

156

Aug. 7/09.

In the District Court of the United States for Porto Rico.

No. 564.

RAMON VALDES

vs.

CENTRAL ALTAGRACIA, INCORPORATED,

and

No. 565.

CENTRAL ALTAGRACIA, INCORPORATED,

vs.

RAMON VALDES.

Memorandum.

This memorandum is made and placed in the files this 7th day of August, 1909, as a reminder to the Court of its understanding and agreement with Mr. Scoville, the Receiver.

Since returning from holding a special term of Court at Mayaguez, wherein these cases were considered, and since the hearing had therein here in San Juan on the merits during the last few days, the Court has had several talks and understandings with H. H. Scoville, Receiver. He informs the Court that he has received his pay at the rate allowed him by the Court's order up to and including the 11th of May, 1909, and has received no pay since then. In consideration of the unfortunate loss accruing because of the receivership and because of all the circumstances of the case, it was agreed on yesterday between the Court and Mr. Scoville that the latter should not receive any additional pay for whatever he may have done since that time or may hereafter do but that he remains generally responsible as Receiver as heretofore and responsible for his care taker that he now has in charge of the plant. It is further understood that Mr. Scoville will go to the States on next week's boat to be gone four or five weeks and that he will fully instruct his care taker in the meantime, he to remain responsible under his bond as Receiver until the further order of the Court when he returns, but he is not to get any additional pay, unless the Court should see fit to allow him something should any extra work develop. The Court is to protect him in the expenses for the care taker, etc., which are small. The Court reserves the right also, if it shall take any action needing the same during his absence, to vacate his appointment as Receiver and appoint anybody else to carry out any orders of the Court that it may deem necessary.

157 (Signed)

B. S. RODEY, *Judge.*

158 *Exceptions to the Separate Answer of the Firm of Nevers & Callaghan, Defendants, to the Bill of Complaint of Central Altagracia, Incorporated, the Complainant, for Insufficiency.*

(Filed September 7, 1909.)

No. 565. San Juan.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMÓN VALDÉS et al.

First exception, for that the said defendants have not answered whether, as alleged on the eleventh and twelfth pages of the complainant's bill of complaint, there are practically no lands which pertain to complainant's sugar factory and which can supply said factory with cane for the purposes of grinding; or whether it is necessary, because of the lack of the same, that complainant should be kept supplied with contracts with the growers of sugar cane for the delivery of the same for grinding at its said factory.

Second exception, for that the said defendants have not answered whether, as alleged on the twelfth page of said bill of complaint, the obtaining of a sufficient number of contracts with growers for the grinding of their canes would have necessitated advances of considerable quantities of money to said cane growers at the time of the filing of the original bill herein; or whether the value of the complainant's property depended on its carrying on its said business and continuing as a going concern.

Third exception, for that the said defendants have not answered whether, as alleged on said twelfth page of said bill of complaint, whether complainant had a large unsecured indebtedness, beside that claimed by defendant Valdés; or whether complainant's said creditors would severally bring suits, unless a receiver was appointed, and recover several judgments against the complainant, which judgments would be followed by levy and sale thereunder of 159 separate parcels of complainant's property for a small fraction of their real value; whereby the complainant's property would all be frittered away to the great damage of both creditors and stockholders.

In all which particulars the said complainant excepts against the said defendant's answer as evasive and insufficient, and therefore prays that said defendants may be ordered to make a further and better answer to complainant's bill of complaint.

F. L. CORNWELL,
Solicitor for Complainant.

160 *Exceptions Taken by Central Altagracia, Incorporated, the Complainant Herein, to the Separate Answer of Ramon Valdés, One of the Defendants, for Impertinence.*

(Filed September 7, 1909.)

No. 565. San Juan.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMÓN VALDÉS et al.

First exception, for that that part of said separate answer on the third page thereof, beginning in the sixth line and continuing as follows, to wit:

"and the defendant states the fact to be that he was elected President of the said corporation after the execution of the deed of conditional sale of November 2, 1907, for the reason that the election of the defendant as such President was considered to be beneficial to the interests of the said corporation in as much as the colonos and other peoples did not want to enter into contracts with the members of the old Board of Directors;"

is immaterial to the allegations of the bill, and therefore impertinent.

Second exception, for that that part of the same answer on said third page thereof, beginning with the fifth line from the bottom thereof, and continuing as follows:

"and defendant states that he always acted in compliance with the resolutions adopted by the Board of Directors of the said corporation, and that there was a long period of time during which there were no meeting of the said Board on account of the absence of its members, others than the defendant."

161 is immaterial to the allegations of the bill, and therefore is impertinent.

Third exception, for that that part of the same answer on the sixth page thereof, beginning with the seventh line on said page, and continuing as follows, to wit:

"but the defendant states the further fact that he was compelled to assume control of said business for the reason that the said Central had been abandoned by Messrs. Cornwell and Pettingill, Vice President and Treasurer of the Company respectively, who absented themselves and went to the United States leaving in charge of the office at Mayaguez, the bookkeeper, Mr. Euripides Lugo, but without instructions and without funds to enable him to do anything beneficial to the interest of complainant and its creditors. That the defendant

then assumed control of the abandoned central for the purpose of keeping the same as a going concern, thus protecting the interest of the Company and of its creditors, and that he assumed such management and control with the consent and authority of the Vice President of the Company, Mr. F. L. Cornwell."

is immaterial to the allegations of the bill, and therefore is impertinent.

Fourth exception, for that that part of the same answer on the twelfth page thereof, beginning in the eighteen line on said page, and continuing as follows, to wit:

"the defendant states that he could not pay to himself the interest due to him under the contract, of conditional sale between him and the complainant, for the reason that there were no funds out of which to pay the said interest; and that there were not funds with which to pay the advances to the colonos and the salaries of the officers of the company."

162 is immaterial to the allegations of the bill, and therefore is impertinent. *impertinent.*

Fifth exception, for that that part of the same answer on said twelfth page thereof, beginning in the seventh line from the bottom thereof, and continuing as follows, to wit:

"the fact being, as it conclusively appears from the terms of the deed executed between the said parties, that the transaction was in fact an absolute sale of the properties to the defendant by the complainant and then a conditional sale from the defendant to the complainant;"

is immaterial to the allegations of the bill, and therefore is impertinent.

Wherefore complainant prays that its said exceptions may be sustained and said impertinent matter, and each and every part thereof, expunged from said answer, at the cost of said defendant.

F. L. CORNWELL,
Solicitor for Complainant.

163

Journal Entry.

September 18, 1909.

564. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INCORPORATED,

and

565. Equity.

CENTRAL ALTAGRACIA, INCORPORATED,

vs.

RAMÓN VALDÉS.

In the above entitled consolidated causes the Court on this day orders that the exceptions to the separate answer of the firm of Nevers & Callaghan, filed on the 7th instant, to the bill of complaint of Central Altagracia and the exceptions by Central Altagracia, Incorporated, to the separate answer of Ramón Valdés, one of the respondents, also filed on said same date, be and the same hereby are overruled, and the Court gives as its reasons therefor, that the same are filed too late, being after the proofs are in, and because said alleged exceptions are manifestly frivolous, and are, in the opinion of the Court, interposed only for the purpose of delay, the issues having been heretofore sufficiently made up in said causes and a trial on the merits had, and because the same is but a carrying out of the plan of counsel to ignore the trial on the merits determined upon in open court at Mayaguez in this district on July 27 and 28 last as appears by a memorandum made by the Court itself and now in the files.

To which action of the Court in thus overruling said exceptions without even setting the same down for a hearing, the said Central Altagracia by its said counsel N. B. K. Pettingill, then and there duly objects and excepts.

164

Journal Entry.

September 25, 1909.

564. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC.,

and

565. Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS.

The issues in these consolidated causes having heretofore been duly argued and submitted, and counsel appearing having thereafter filed their briefs and arguments in writing, and the Court having given full and due consideration to all of the same, and being now fully advised in the premises, sends an opinion to the files giving its reasons for its action, in and by which opinion it is found that Ramón Valdés is entitled to an equitable mortgage or lien upon all the rights and property of the Central Altagracia, Incorporated, in and to the described lease and premises, and which lien he is entitled to foreclose.

It further finds that Nevers & Callaghan are entitled to an execution lien upon the machinery belonging to the plant; and further finds that all of the rights of the Central Altagracia in and to the property mentioned in the bills of complaint are first held and bound for all of the receivership debts; and that the said rights and property should in default of the payment of the debts, as in said opinion stated be sold for the payment of the same in full as far as may be in the following order, that is to say:

First. The entire Receivership debts and taxes.

165 Second. The entire Nevers & Callaghan claim and interest.
Third. The entire Ramón Valdés mortgage or lien and interest, and

Fourth. The general creditors.

Whereupon the Court orders counsel for the said Ramón Valdés, Messrs. Martin Travieso and José de Diego, to immediately prepare a decree in the premises and submit the same to the Court for its approval and entry.

To which action of the court in thus finding the lien of Nevers & Callaghan superior to that of Ramón Valdés, the latter by his counsel Martin Travieso, then and there duly objects and excepts. And also:

To which action of the court in making the findings in its said

opinion set forth, and in overruling the exceptions recently filed in the premises by it, and in ordering a decree as mentioned, the said Central Altamaria, Incorporated, by its counsel N. B. K. Pettingill then and there duly objects and excepts.

166 In the United States District Court for Porto Rico.

Nos. 564 and 565. Equity.

RAMÓN VALDÉZ

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN,

Consolidated with

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉZ and NEVERS & CALLAGHAN.

Statement of Findings of Fact and Law and Opinion of the Court on the Merits.

The above two suits which were consolidated for the purposes of a receivership, and for the purposes of trial, are bills in equity under which a receiver was appointed and concern the property known as the "Altamaria Sugar Central" near Mayaguez, on this Island. The property previous to January 1905, consisted of a relatively small sugar mill of a somewhat ancient pattern and twenty two cuerdas of ground, upon which it was situated with perhaps some other personal property. At that time it belonged to a man by the name of Joaquin Sanchez de Larragoiti, who was then a resident of the city of Paris, France. On the 18th of January, 1905, this Mr. Sanchez de Larragoiti entered into a private contract or lease of said premises with one Salvador Castello, running for a period of ten years thereafter. Under this contract, Castello was to have the right to continue said sugar central for the manufacture of sugar and to put in any new machinery he saw fit, and was to pay his lessor 25% of the profits accruing therefrom, and also had the right as to the remaining 75% of the profits to interest anyone he saw fit with himself therein, as he might deem convenient.

167 About the 6th of June following the date of this contract, the parties extended its term for a period of ten additional years, so as to make it a twenty year term in all. A few days later, on July 1st, 1905, this lessee Castello, entered into a contract with one Frederick L. Cornwell, and transferred all his rights in this lease to him as trustee, for the benefit of a corporation to be immediately organized, and to be known as the Central Altamaria Incorporated. Castello was to have certain stock and a certain official position in this new concern as a consideration for the transfer. Mr. Cornwell aided by Mr. N. B. K. Pettingill, then became chief promoter of the concern and immediately organized under the laws of the State of

Maine a corporation as intended, and transferred all of the rights that had thus been transferred to Cornwell in trust, to the new corporation which immediately proceeded to business, and within three years next following installed upon said twenty two acres of ground a large amount of new sugar machinery and other improvements said to have cost with freight and installing charges added, quite or over two hundred thousand dollars. This corporation proceeded with its business as a sugar grinding central with more or less success, and with more or less trouble with its stockholders, colonos and creditors. See Wilson v. Central Altagracia, 2 P. R. Fed. 429, and Central Altagracia v. Javierre & Gil 3 id. 256, and same v. Nevers & Callaghan 3, id. 496; also equity suit docket No. 579, San Juan Division, Larragoiti heirs v. Castello and Central Altagracia; and equity suit No. 203 Mayaguez Division, Castello et al. v. Central Altagracia.

On April 11, 1907, owing to the failure of Ceballos & Company, and for other reasons, the concern became somewhat involved financially, and was forced to borrow from the complainant Ramon Valdez, in suit 564 of the caption, thirty five thousand dollars for which it gave him some sort of an instrument in the nature of a

168 "Venta con Pacto de Retro", but later in October of that same year, was forced to borrow from him an additional sum of thirty thousand dollars, making the whole debt sixty five thousand dollars. It seems that this money was needed to finish putting in the machinery as planned. At the time of giving this additional money to the central which occurred in the city of New York, the two transactions were merged and some very peculiar instruments were entered into between the parties in the office of Curtis, Mallet-Prevost & Colt, who it seems acted as attorneys for all the parties. First what purports to be an absolute sale of the entire rights that the Central Altagracia had in and to the sugar mill and plant was executed to Valdez, and he in turn immediately made a sale back to the corporation of the same property. Then the corporation elected Valdez its President and Manager, etc. He had been Vice President and a Director previous to that time since first lending it money and he immediately took charge of the plant for the ensuing grinding season, with a view to paying himself back in installments as was stipulated in the contracts between the parties, but the property was according to the instruments mentioned to belong to him absolutely until he was thus repaid etc.

It was fully in evidence on the trial that from the time that Valdez first advanced any money to the Central, he took considerable interest in its affairs. During his connection with the concern he personally purchased, often at heavy discounts it is true, large amounts of pressing debts and claims against it, which it is contended because of his then fiduciary relation to the concern he cannot now collect the face value of, but for which he can now only collect the amount he actually paid therefor with interest. It is also in evidence that he loaned Mr. Cornwell \$7500.00 with some of the capital stock of the Central as security, and that he afterwards was forced to take the stock either on account of or in satisfaction of the debt. It is further in evidence that he received an additional 150 shares of the

capital stock of the Central. He contends that this was given him in consideration of his work and in the nature of a commission for purchasing the machinery for the plant, in addition to a salary of

\$3000.00 per annum which he was to have, although he
169 collected only \$500.00 for two months' wages. Counsel for

the Central contends that not only were his position as Director and Vice President, and later his position as President as well as the salary and the 150 shares of the capital stock given him as a consideration for making this advance or loan to the Central, but that such were the terms which Mr. Valdez demanded and increased them from time to time, and that therefore, no matter what the instruments executed between the parties were or can be called, or the parties were forced to call them, owing to the peculiar situation and exigencies of the case, and the absence of a chattel mortgage law in Porto Rico, still the transaction is and was essentially a loan from Valdez to the Central, for which not only the then officers but the stockholders by a meeting held were willing he should have. The Central therefore contends that Mr. Valdez has been the recipient of usurious contracts and interest and that in this sort of a suit the Central should have all such legal advantage of such fact as the law gives it.

It developed also that Mr. Valdez while thus managing the property personally and necessarily, expended some \$14,000.00 or more, over and above the \$65,000.00 mentioned, in merged advances which he made to the concern. The Central contends that at any rate as to all the debts which he purchased, and as to all advances which he thus or otherwise made over and above the \$35,000.00 he is purely and simply a general creditor therefor, and as to those debts and claims that he purchased for less than face value the Central is entitled to the benefit of such reduced purchase price.

During the trial Mr. Valdez introduced evidence tending to show that outside of his stock purchases he has advanced nearly \$94,000.00 to the Central including the \$65,000.00 represented by the contracts made in New York. An examination of this account shows it to be to a considerable extent made up of interest and other items that he may or may not be entitled to recover, as we shall hereafter find.

170 Valdez apparently did his best in and about the management of the plant and in and about purchasing and installing machinery, but the season being then so far advanced as that for one cause and another, little if any success attended the enterprise, and in consequence the payments to him and to all other creditors were defaulted. During this management of Valdez, of the sugar mill, considerable friction arose between the promoters and former managers and chief owners Messrs. Pettingill and Cornwell, on the one side, and Mr. Valdez on the other, and so bitter did this become as that on June 2nd, 1908, Valdez, claiming to be the owner of all the rights of this corporation in and to this sugar mill and plant filed a suit at law No. 563, on the docket, to eject the corporation entirely therefrom, and to install himself as the absolute owner of all the corporation's rights therein even as against the corporation's creditors. The basis of this suit of his was the absolute sale of the prop-

erty so alleged to have been made to him in New York, in October, 1907, which instrument was then presumably for the first time brought to the knowledge of others than the actual parties thereto and their attorneys.

Valdez immediately followed this suit at law with a petition in equity for a receiver, which was filed as suit No. 564, as mentioned in the caption.

Immediately thereafter, and on the said same day June 2nd, 1908, Messrs. Pettingill & Cornwell as representing the Central Altagracia Incorporated came in, and filed suit No. 565, as mentioned in the caption, also petitioning for the appointment of a receiver for the plant and property and alleging many things with reference to the action and management of Valdez concerning the property while in his charge etc. A few days later, and after several hearings were had, the Court consolidated the two equity suits Nos. 564 and 565, and appointed a temporary receiver of the property. A few months

later however, and after much additional litigation had trans-
171 vened in the matter, and after debts had been created, this temporary receiver was discharged as such, and appointed permanent receiver, with power to borrow money and proceed with the management of the property as a going concern in an effort to enable it to pay its debts and give the Court an opportunity to assert the rights of the respective parties. All this procedure was largely at the request of and in accordance with the wishes of all the parties to these particular suits. This receivership has continued ever since (nevertheless the receiver's salary was reduced to a care-taker's salary many months ago), but unfortunately owing to short crops in that vicinity and to many other annoying, unfortunate and unavoidable causes, resulted in a loss of about \$17,000.00 some of which is represented by outstanding receiver's certificates and all of which debt is a first lien upon all the rights of the Central Altagracia Incorporated, in and to the sugar plant and premises about which we are speaking.

The record in the two causes mentioned in the caption has grown quite large, and during the continuance of this receivership the Court called all of the counsel in said consolidated suits as well as counsel in several other suits concerning the property, together, and made strenuous efforts to bring this unfortunate litigation to some sort of a satisfactory conclusion. These meetings were held both at San Juan and Mayaguez. At one time the Court made an effort and expressed its willingness to permit the issuance of receiver certificates therefor if the interest of the Sanchez de Larragoiti heirs (the original lessor having died) could be purchased for the Central at a reasonable price, so that there might be a title in fee in the Central Altagracia Inc. and that the Court might thus avoid the continuous applications and efforts of the representatives of that estate to oust everybody connected with this litigation from the premises.

Unfortunately all this effort of the Court, in which most of the counsel joined, proved futile and nothing could be done.

In the files of the consolidated causes mentioned in the caption will be found extensive written memoranda made by the Court from time to time, setting out with more or less detail all these different efforts it made with a view to ending this

litigation. Finally, in the latter part of July, 1909, the Court went to the Mayaguez district and there, after several conferences with counsel in all the suits connected with this litigation, passed upon pending demurrers etc., with a view to raising the proper issue so that the rights of the parties might be settled.

For a time this action of the Court appeared to meet the approval of all counsel concerned, and the bills or petitions in both suits were amended and cross-bills filed so that we could easily see the real issue between all the parties connected with the suits mentioned in the caption. See the two statements made and signed by the Court and placed in the files setting out these facts under date of July 21, and 28, 1909. However, after this action on the part of the Court, the Central Altamaria by one of its solicitors, N. B. K. Pettingill, under date of July 27th, filed his own affidavit claiming that he could not safely go to trial because of the necessity for taking depositions of several witnesses whose names were set out in the affidavit, and who lived in New York and elsewhere in the States, and attempting also to set out what he expected to prove by such witnesses and stating that he withdrew any offer or intimation he may have theretofore made that he would immediately proceed with the trial. However, all other counsel connected with the matter being present, and the day having arrived when the trial on the merits was to proceed, and the Court after having examined the answers and the cross-bills, concluded that there was no necessity for further delay and that the parties during the more than a year that the matter had been in the hands of the court and the property in charge of its receiver, had had ample time within which to perfect their pleadings, and that if it in fact thereafter became necessary as shown by the proofs, that the evidence of any of the witnesses whose names were set out in the affidavit should in fact be required, the Court would hold the proceedings for such purpose. Thereupon the Court without the intervention of an examiner or master proceeded for 173 several days both there and later at San Juan, and received evidence on the merits from complainant Valdez and the intervenors Nevers & Callaghan, in which hearing both Messrs. Pettingill & Cornwell testified at great length with reference to the rights of the Central Altamaria Incorporated, although they took no part as counsel for the Central in the proceedings on the trial, save incidentally as such witnesses. On this hearing also all proper exhibits and proofs were received and the stenographer's notes when afterwards written out, and made a record of upwards of 200 pages of typewritten matter. Immediately at the end of the hearings, counsel for Valdez and for the intervenors Nevers & Callaghan and also for the owner of the fee of the property the Larragoiti estate, addressed the Court orally at great length, and afterwards filed elaborate written arguments and briefs. Counsel for the Central Altamaria Incorporated took no part in the oral arguments and filed no brief, but insisted that he was entitled to except to the answers of Nevers & Callaghan and Ramon Valdez, in suit No. 535, at some future time, which he did under date of September 7th, 1909, but which exceptions because of the Court believing they were

introduced for more purposes of delay and because they were manifestly frivolous in character, were overruled.

For several days last past we have read and examined the evidence thus taken and written out from the stenographer's notes, and have examined the several large exhibits introduced, so that at the present time we have the contentions of the different parties fully before us, and well in mind.

It transpires that several months before any negotiations of any kind or character had taken place, between the Central Altagracia and Valdez, the former had obtained a loan of some \$25,000. from the firm of Nevers & Callaghan, of New York, promising to deliver the sugar crop of the mill for the ensuing season to re-pay the same, but failed to do so, and left a large part of said debt due and owing. This firm according to all we can gather from the record, had no knowledge of the transactions between the Central and Valdez, or

these so-called sales of the entire property of the concern to 174 him when the same are purported to have been made or at any time previous to the application for the appointment of the receiver, as none of such instruments were recorded in any registry of property.

We might pause here to say that the Registry of Property of the District where this land and plant are situated contains no entry concerning the property in question, save that which brings the title into Joaquin Sanchez de Larragoiti, the lessor of Castello. All the other transactions as heretofore mentioned, it seems were not and could not be registered under the law.

After Nevers & Callaghan's account became due, and on December 12, 1907, they filed a suit (516 Law docket) in this court, on the note that represented it, and thereafter on May 16th 1908, recovered judgment for nearly \$16,000.00. Under this judgment, on the 29th of May, 1908, they caused execution to be levied on "all the machinery within the factory building of the said Central Altagracia Incorporated."

On June 3rd, while the contest for the receivership was going on, we made an order suspending this execution of Nevers & Callaghan, thus levied upon the machinery of the sugar mill, until the further order of the Court, but providing in the order that such suspension should in no manner affect the lien rights if any existed by virtue of such execution in favor of Nevers & Callaghan. This action of Nevers & Callaghan in thus levying their execution is no doubt what precipitated at that particular time this controversy, or at least caused both the other contestants to each apply for a receiver, although the same result would at all events have soon followed.

We have made the foregoing considerable statement of facts connected with this litigation without, as can be seen, showing what the real controversy is.

As we see it, the effort of Central Altagracia through their attorneys by their action in refusing to take part in the trial on the merits, is to secure delay in the proceedings. We cannot imagine any other object, because from the developments at the trial, it is mani-

fest that every fact that can be known about the matter is well in evidence and that nothing remains that necessitates the taking of the depositions of any of the witnesses in New York or elsewhere, mentioned in the affidavit of July 28th, of Judge Pettingill, solicitor for the Altamaria, which he filed as stated at the time he endeavored to avoid proceeding with the trial on the merits.

The effort on the part of Mr. Valdez all through the litigation has been to show,—and he has made strenuous efforts in this behalf,—that he is the absolute owner of all the new machinery put in this plant and in addition the owner of all the lease and machinery rights of the Central Altamaria in the sugar plant and land in question, and that he is entitled as against that corporation and all its stockholders and creditors to immediately take possession thereof. Nevers and Callaghan simply claim that in and by their said suit and the levy of their said execution, they have obtained as against the machinery an absolute lien superior at least to Mr. Valdez or any other creditor, and perhaps even superior to the rights and interest of the estate of the original lessors, Larragoiti. Counsel for Nevers & Callaghan, claim that Valdez is nothing but a general creditor, because as they allege, the Central Altamaria could not sell him any right in the plant or land in question, and because the alleged transfers were not recorded so as to give notice to existing or future creditors, or anybody else and because a chattel mortgage is unknown to the laws of Porto Rico.

The record contains much evidence tending to show that the main object of the officers of the Central Altamaria and Valdez, was that the latter should have security for his advance of money. Neither Mr. Pettingill or Mr. Cornwell denied that, but on the contrary during the giving of their evidence several times affirmed it.

As stated, we have examined with great care the contentions of counsel for Valdez and Nevers & Callaghan, and while their laborious efforts are commended for industry, their arguments in many instances tend to carry us away from the real issue. And 176 therefore we think we can settle this unfortunate matter by confining ourselves to the triangular controversy that is before us, without affecting the alleged or real rights or interests of others not parties to these consolidated suits.

We are unhesitatingly of the opinion that the entire matter between the Central Altamaria and Mr. Valdez, no matter what they may call it in the instruments executed between them, was and is as contended by the Central, a loan of money for which security was intended to be given. As between the parties, of course, the instruments they made would ordinarily be binding, but in a suit in equity like this, where its designation as an outright sale is attacked, the Court will look behind the face of the instruments to ascertain what the transaction really is. See our opinion in *American Colonial Bank v. Cabrera et al.*, 3 P. R. Fe.L. 14 and cases cited.

It is therefore our opinion that the transaction as between those two parties is an equitable mortgage or lien, and that because of the breach of the conditions of it, Valdez is entitled to have it foreclosed.

We think though, that this equitable mortgage or lien, should be thus secured and guaranteed to him only for the \$65,000.00 and interest mentioned and that as to every other advance that he made to the concern, or paid for it, he is but a general creditor. This latter statement of course, does not apply to his stock purchases, because as to those he stands in the same position as any other stockholder and his expenditures on that account are probably a complete loss.

We also hold that as to all of the accounts, **promissory notes**, claims and debts which he assumed or paid for the concern, he is entitled to come in only as a general creditor therefor, and only for the actual amounts, plus interest, which he paid therefor as set out in the notes purchased, or at 6% per annum on claims or debts where the interest is not mentioned, and that he is not entitled to claim the face value thereof against the Central, because at 177 the time he made such purchase or so guaranteed such debts, he was both a stockholder and an officer of the corporation itself, and it is fundamental in law that no person occupying any such fiduciary relation to a corporation, can at such time, purchase claims or debts against it at a discount, without giving the concern whose officer he was, the benefit of such discount. See our opinion in the Canoyanes case, 2 P. R. Fed. 195, and cases cited, where we went fully into the law on this question.

The next proposition, that is, as to what the relative situation is between this equitable lien or mortgage of Valdez on the one hand, and the execution of Nevers & Callaghan on the other, is not so easy,—but on the whole, under the rule that the law favors the diligent, and that the levying of an execution fixes a plaintiff's rights in the absence of superior rights in others, we feel bound to hold, and do hold, that Nevers & Callaghan's lien is superior to that of Valdez. It is our opinion, that any creditor of this corporation who secured a judgment and a levy upon any of the property rights of the Central Altagracia, previous to June 2nd, 1908, when Valdez applied for a receiver to take charge of it, unquestionably both at law and in equity has a superior right to Mr. Valdez,—and this because of the peculiar situation of the law in Porto Rico. A chattel mortgage is unknown to the jurisdiction and no record was made or could be made, and so far as we know, no creditor knew anything about Mr. Valdez' alleged rights previous to his application for a receiver, when he for the first time produced his alleged deed and sued to eject everybody from the property in question. See suit No. 563, Law docket, this District. The fact that he, months previous, took possession of the plant and managed it, does not change the situation, because he took possession as President of the Company, and therefore permitted the whole world to believe that it was still the property of the Central Altagracia Incorporated. From the moment that he filed his suit No. 563 aforesaid and his bill in suit 564 of the caption, his situation was in our opinion different, 178 and from that moment his lien which we hold to exist, took effect as against non-diligent creditors who had neither obtained judgments or liens previous to that time.

We are not inclined to give ear to the oft repeated statement of counsel for Nevers & Callaghan, that Mr. Valdez' action all through this matter amounted to a fraud in law upon all the creditors of the main concern, because the Central itself through meetings of its stockholders authorized the transaction with him, and the officers of the concern importuned and implored him to save them in their financial stress. Further, the evidence clearly shows that Mr. Valdez very reluctantly advanced money to the concern at all, and did so largely as a matter of friendship for some of the officers of the corporation. It is fully in evidence that he performed a large amount of services for which the \$500.00 in the way of salary he received has but ill paid him, and of course, the large amount of money he spent for the purchase of stock is, as stated, under the circumstances probably a complete loss. Further, his action in spending a large amount of money over and above his mortgage lien, in paying for the installing of the machinery, and in silencing outside threatening creditors by purchasing their claims and accounts is ample evidence, that instead of being an enemy with ulterior designs, he was at that time the financial friend of the concern. He would probably now willingly make a large sacrifice and discount on his claim if he could secure his money, and have done with it all, in fact he so stated several times while testifying. He is probably the largest general creditor outside of what we are here holding, that he has an equitable mortgage lien for. It is our opinion therefore that notwithstanding the unfortunate situation, he is entitled to the thanks rather than to the censure of at least the officers of the corporation.

We do not desire that anything said in this memorandum of our views should be construed as any reflection upon the officers of the Central Altamira Incorporated. On the contrary, we think they have shown their good faith because if our information is right, they have invested their all in the enterprise, and have per-

179 —haps lost it. They did this without taking to themselves any security for their own protection, and therefore share the same financial fate as other stockholders. In addition to this they have probably lost their years of hard work in and about the effort to make the enterprise a success. In truth it can be said that the failure of the concern cannot be ascribed to the individuals connected with it. True, incompatibility of tempers between the officers and some of — stockholders had its effect; but droughts and failure of crops, as well as the unfortunate failure of Ceballos & Co., and above all, the sudden erection of competitive enterprises, more than anything else tended to this unfortunate result.

We therefore find and hold that the equitable mortgage and lien which Mr. Valdez is entitled to upon all of the rights of the Altamira, in and to the said house, plant, land and property of the Central Altamira should be foreclosed, and in default of the payment to him of the amount due as here found, the property should be sold according to law at as short a day as may be, in order to enforce such payment and that at such sale Mr. Valdez shall have the right to be a bidder on account of his said lien to the extent of the

principal sum of \$65,000.00, plus interest as mentioned in the instruments between the parties, to the date of the sale.

We further find and hold, that out of the proceeds of such sale the claims shall be paid in full, in the order following:

1. All outstanding receiver certificates, taxes, accounts and other debts of the receivership, which shall include the sum of \$500.00 as overdue wages to Benjamin S. Cornwell, which in the opinion of the Court is a preferred claim, and ought to have been paid at the incipiency of the receivership.

2. The claim in full of Nevers & Callaghan to the date of the sale.

3. The lien aforesaid of Mr. Valdez, and

4. All other creditors of the concern as shown in the receiver's report filed under date of July 27, 1909,—such other creditors including Mr. Valdez, to be paid *prorata* in so far as may be.

180 Therefore, a decree will be immediately prepared by counsel for said Valdez, making the findings of fact and law herein indicated, foreclosing Mr. Valdez' lien and in default of payment within a short day, providing for the sale as herein set forth, and further, providing that at the time of the sale—in case Mr. Valdez is the purchaser—the amount of the receivership debts, and of the entire cost of the sale and Court costs and the debt of Nevers & Callaghan, shall be paid into the Registry of the Court.

The cause is retained for all necessary purposes.

(Signed)

B. S. RODEY, *Judge.*

Journal Entry, October 9, 1909.

564. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC.

and

565. Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS.

Order.

And now on this 9th day of October, 1909, Martin Travieso, Esq., one of the counsel for Ramón Valdés in the above entitled consolidated causes, having inquired of the Court as to what name shall be inserted in the decree as the person to make sale of the property herein, the Court announces from the bench that there are special reasons therefor, and it is therefore ordered that:

Francisco Fano be, and he hereby is appointed Special Master in

Chancery to make the sale under the decree about to be entered herein.

(Signed)

B. S. RODEY, Judge.

182

Journal Entry, October 9, 1909.

No. 564. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC.

and

No. 565. Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS.

Because of this being the last day of this present (April 1909) term of this Court, and because proceedings in the above-entitled consolidated causes have not been finished, Martin Travieso, Jr., counsel for Ramón Valdés, and José Hernandez Usera representing Francis H. Dexter, of counsel for Nevers & Callaghan, requesting the same, these consolidated causes are hereby ordered to be carried over to and continued into the coming October 1909 Term of this Court for all necessary purposes in the premises.

183 In the District Court of the United States for Porto Rico.

Equity. Nos. 564 and 565.

RAMON VALDES

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

CENTRAL ALTAGRACIA, INC.,

vs.

RAMON VALDES and NEVERS & CALLAGHAN.

Final Decree of Foreclosure and Sale.

This cause came on to be heard at the April Term, 1909, in open court, upon the bills of complaint in the two consolidated causes, the answers and cross bills of the defendants in both cases, the replications and answers to the cross bills of Ramon Valdes and Nevers &

Callaghan, and the proofs in said cases and the argument of counsel for Ramon Valdes and counsel for Nevers & Callaghan; and

It appearing to the Court that a bill of complaint was filed in this court on the second day of June, 1908, by Ramon Valdes against the Central Altgracia Incorporated, praying for the appointment of a Receiver of the property of the said corporation and for the delivery to him of the possession of the said properties in compliance with the express terms of certain contracts between the said Ramon Valdes and the defendant corporation, which contracts were introduced as evidence, and that on the same 2nd day of June, 1908, the defendant Central Altgracia, Inc., filed its demurrer to the said bill of complaint; and

It further appearing to the Court that on the said June 2, 184 1908, the Central Altgracia, Inc. filed in this court its bill of complaint against Ramon Valdes, praying for the appointment of a receiver of its properties and charging the defendant with negligence and mismanagement of the said property while being President and Director of the corporation, to which bill of complaint the defendant Valdes demurred; and

It further appearing to the Court that the said two cases were consolidated and a temporary receiver appointed, who afterwards was appointed permanent receiver with power to borrow money and manage the property of the Central Altgracia Incorporated; and

It further appearing to the Court that the firm of Nevers & Callaghan, defendants in the two consolidated causes, filed their petition of intervention in said causes claiming that they had a lien over the properties of the Central Altgracia, Incorporated, superior to the claim of Ramon Valdes, by virtue of an execution levied upon the said property on the 29th day of May, 1908; and that the said Nevers & Callaghan demurred to the bills of complainant in the two causes; and

It further appearing to the Court that on July 17, 1909, at a session of the court held at Mayaguez, the demurrers in both causes were overruled pro forma, without objection from any party, with a view to bringing the said causes to an issue; and

It further appearing to the Court that soon after the overruling of the demurrer in both causes, the Central Altgracia, Incorporated, defendant in suit No. 564, filed its answer to the bill of complaint of Ramon Valdes, to which answer the said Valdes immediately replied, and that Nevers & Callaghan, also defendants in suit No. 564 filed their answer and cross-bill to the bill of Ramon Valdes, whereupon the said Valdes filed his replication and answer to the said answer and cross-bill; and

It further appearing to the Court that soon after the overruling of the demurrer in suit No. 565, Ramon Valdes, one of the defendants therein, filed his answer and cross-bill to the bill of complaint of Central Altgracia, whereupon the other defendants Nevers & Callaghan filed their answer to the said cross-bill of Ramon Valdes; and that the Central Altgracia, Inc., refused to file its replication to the answer of Ramon Valdes, although it was given ample time and opportunity to file its said replication;

and that the said Central Altamaria, Inc., although repeatedly requested to, refused to take any part in the trial of the consolidated cases and to proceed with the said trial, insisting that the depositions of several absent witnesses were necessary for the presentation of its case and alleging that it had the right to file exceptions to the answer of Ramon Valdes; and

It further appearing to this Court that such efforts on the part of the Central Altamaria, Inc., in insisting on the taking of depositions, which the Court found to be utterly unnecessary, and in refusing to proceed with or take any part in the trial of the cases, were made solely for the purpose of delaying the proceedings in said causes, there being no necessity for further delay; and

It further appearing to the Court that the Central Altamaria, Inc., on the 7th of September, 1909, filed its exceptions to the answer of defendant Valdes in suit 565, and that the said exceptions were overruled upon the grounds that they were manifestly frivolous in character and were introduced for purposes of delay; and

It further appearing to the Court that the property of the Central Altamaria, Incorporated, is as follows:

1. That certain lease of the sugar factory known as "Central Altamaria" situate, lying and being near the city of Mayaguez, Island of Porto Rico, together with certain machinery for the manufacture of sugar then at that time being in and forming part 186 of said factory, together also with twenty two (22) cuerdas of land upon which the said factory is built and which pertain, and are annexed to and immediately surround the said factory, executed at Paris, France, on or about the 18th day of January, 1905, by Joaquin Sanchez Larragoiti and in favor of Salvador Castello of Mayaguez, Porto Rico, and for a term of twenty years from January 18, 1905.

2. All the machinery, apparatus and utensils used for or in connection with the manufacture of sugar, installed in the Central Altamaria factory by the Central Altamaria, Incorporated, after the assignment of the lease by Salvador Castello to the said corporation, forming the manufacturing plant of the said Company.

3. All the rights, claims, appurtenances, contracts for the grinding of cane, scales, railroad tracks and switches, tools, implements, household and office supplies, rights-of-way, easements, mules, horses, tug boats, barges and all other personal or real property belonging to the Central Altamaria, Incorporated. And

It further appearing to the Court that the legal effect of the contracts of October 28th and November 2, 1907, between the Central Altamaria, Inc., and Ramon Valdez, was to create an equitable mortgage or lien over the said property of the Central Altamaria, Inc., and in favor of the said Ramon Valdez, for the sum of sixty five thousand (\$65,000.00) dollars, together with the interest stipulated in the said contracts, at the rate of 10% per annum; and that as to the other amounts claimed by the said Ramon Valdez, he is but a general creditor of the Central Altamaria, Inc.; and

It further appearing to the Court that Nevers & Callaghan acquired a lien over the said property of the Central Altamaria, Inc.,

by virtue of the execution levied upon the said property on the 9th of May, 1908, and that the said lien is superior to the equitable mortgage or lien of Ramon Valdez, for the reason that Nevers & Callaghan acquired by their judgment and levy of execution prior right in and to said property so levied upon, being the machinery in said factory; and

The Court having heretofore appointed one H. H. Scoville as receiver of the property of the Central Altagracia and one Elton Warner as an accountant to revise the books and accounts of the

187 having heretofore filed their reports herein, and the same having been approved by the Court, showing the present indebtedness of the said corporation to be as follows:

Bills Payable.

Favor Frank S. de Ronde Co. due 7/1/07	\$5,000.00
" " " " 21/1/08	7,000.00
" " " " 4/1/08	7,000.99
" " " " 5/1/08	4,488.82
Total	\$23,488.82

Due to Ramon Valdes:

As at July 12, 1907	\$35,000.00
Sundry cash advances and supplies furnished down to July 1, 1908	43,031.31

Total	\$78,031.31
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McMurtrie-Guiler Co.	753.14
Link Belt Company	37.20
188 Robert S. Graham	1,006.75
Sugar Apparatus Mfg. Co.	67.95
C. A. Schieren & Co.	149.04
A. Lynn & Hijos de Perez Moris	16.75
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	\$27,015.90

Nevers & Callaghan:

Judgment in their favor	\$15,878.87
Plus interest at 6 $\frac{1}{2}$ from July 30, 1907, to May 16, 1908, date of judgment	756.90
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	\$16,635.77
Interest to 8/16/09 at 6%	1,247.68
	<hr/>
Total	\$17,883.45

Receivership.

Receiver's Certificates:

No.	Favor.	Issued.	Due.	Amount.	Interest.
1.	N. B. K. Pettingill	8/15/08	5/15/09	\$1,000.00	9 $\frac{1}{2}$
2.	H. H. Scoville....	8/15/08	5/15/09	1,000.00	9 $\frac{1}{2}$
3.	J. M. Turner.....	8/15/08	5/15/09	3,000.00	9 $\frac{1}{2}$
4.	Ramon Valdes....	9/23/08	6/23/09	1,000.00	9 $\frac{1}{2}$
5.	Ramon Valdes....	10/22/08	7/22/09	1,000.00	9 $\frac{1}{2}$
8.	Fritze, Lundt & Co. (certificate given to guarantee sugar de- liveries, became due March 31, 1909		\$2,500.00		
	Offset by open account....		873.97		
			<hr/>	1,626.03	
				<hr/>	
	Approximate accrued interest.....			\$8,626.03	
				760.00	
				<hr/>	
				\$9,386.03	

Taxes:

Treasury of Porto Rico, Insular taxes for Fiscal Year, July 1st, 1908, to June 30, 1909.....	\$2,780.70
Municipal Taxes	150.00
Corporation License Fee.....	25.00
	<hr/>
	2,955.70

189 Colonos:

Alfred Cristy	\$750.00
Pedro E. Ramirez	84.05
Domingo Torres	239.27
Rafael Pujals	545.01
Antonio Paz	10.00

\$1,628.36

Sundry Creditors:

Ramon Valdes	\$3.41
Sucesores de Suau	309.98
J. Ochoa y Hermano	542.10
Sucesores de Abarca	618.92
V. Barletta & Co.	104.40
Vidal & Co.	10.80
E. Gonzalez	5.39
West India Oil Co.	137.90
Sobrinos de Portilla	176.90
Heyman & Co.	58.87
Sucesores de Bianchi	7.16
Review Printing Co.	6.00
Dooley, Smith & Co.	4.78
A. Bravo & Co.	124.60
H. V. Grosh	190.64
P. Bellido	24.15
W. Falbe	51.56

\$2,377.56

And it further appearing to the Court that the Central Altagracia Incorporated has defaulted in the payment of Ramon Valdes 190 of the two installments of the principal and interest due, in accordance with the terms of the contracts between the said corporation and the said Ramon Valdes, which contracts have been held to constitute an equitable mortgage or lien in favor of the said Ramon Valdes over the properties of the said corporation above described, and that the said mortgage or lien should be foreclosed and the sale of the said property should be decreed to answer to the terms of the said contracts.

Therefore, it is by the Court ordered, adjudged and decreed that the mortgage lien of the said Ramon Valdes under and by virtue of the said contracts of November 2, 1907, be and it hereby is established and declared on each and all of the properties, leases, rights and contracts hereinbefore described, for the sum of sixty five thousand (\$65000.00) dollars with interest at 10% per annum from November 2, 1907.

And it is further ordered by the Court that the said lien be and it hereby is foreclosed and all rights of the said Central Altagracia Incorporated in and to all the said properties, rights, leases and contracts composing the Central Altagracia Incorporated as a going con-

cern be and the same are hereby ordered sold to satisfy the said lien in favor of Ramon Valdes for the sum of \$65,000.00 and interest as aforesaid, unless the Central Altamira Incorporated pays to the said Ramon Valdes the said sum of \$65,000.00 and interest within 30 days from the entry of this decree.

And it is further ordered that Francisco Fano be and he hereby is appointed Master to make the said sale and to report his action to this Court for further action herein.

And it is further ordered by the Court that, as hereinbefore set out, the said property be sold in bulk as a going concern, and that the successful bidder at the said sale do pay in in cash within five (5) days from the date of the acceptance of his said bid by the 191 Master the sum of \$3000.00 in cash to the Registry of this Court, the same to be returned to the said bidder should the report of the sale by said Master not be approved.

And it is further ordered that Ramon Valdes shall have the right at such sale to be a bidder on account of his said mortgage lien, to the extent of the said principal sum of \$65,000; plus interest at 10% from November 2, 1907, to the date of the sale.

And it is further ordered and decreed that after the payment of all court and other costs out of the proceeds of the said sale, the claims shall be paid in full in the order following:

First. All outstanding receiver's certificates, taxes, accounts and other debts of the receivership, which shall include the sum of \$500.00 as overdue wages to Benjamin S. Cornwell.

Second. The claim of Nevers & Callaghan, amounting to \$15,878.87, plus interest at 6½% from July 30, 1907, to the date of the sale.

Third. The full amount of the mortgage lien of Ramon Valdes, for \$65,000.00, plus interest at 10% from November 2, 1907, to the date of sale.

Fourth. All other creditors of the concern as shown in the Receiver's Final Report, such creditors, including Ramon Valdes, to be paid pro-rata in so far as may be; provided, however, that the said Ramon Valdes shall collect only the amounts actually paid by him for the debts, notes and accounts of the corporation purchased by him at a discount while he was an officer of the concern, after he has proved to the satisfaction of the Master hereinbefore appointed, what amounts he so actually paid.

And it is further ordered that the successful bidder at the said sale may pay in as cash on his said bid the Receiver's certificates and obligations outstanding at the time of the sale, provided however, that the said bidder shall not pay in less than the aforesaid sum of \$3000.00 in cash to be applied to the payment of Master's fees, compensation of the Receiver, Stenographer and other court costs and expenses.

And it is further ordered and decreed that the successful 192 bidder at said sale shall pay in in cash at the time the sale is approved by the Court, an amount sufficient to pay in full all receiver's certificates and obligations existing and not represented by the said bidder.

And it is further ordered that in case Ramon Valdes should be the purchaser at the sale, he must, at the time of the said sale, pay the full amount of all the costs and receivership debts, the entire cost of the sale and the debt in full of Nevers & Callaghan into the registry of this court.

It is further ordered and decreed that the above described property shall be sold by the Master hereinbefore appointed in bulk and as a going concern, at public sale, at the door of the courthouse of the United States District Court for the District of Porto Rico, in the city of San Juan, Porto Rico, on the 27th day of November, A. D. 1909, at two o'clock in the afternoon.

It is further ordered and decreed that notices of such sale shall be published by the said Master once a week for at least four weeks prior to the date hereinbefore fixed for such sale, in the newspapers known as "El Tiempo" and "El Boletin Mercantil," both published in the city of San Juan, and also in the newspaper called "La Voz de la Patria," published in the city of Mayaguez, Porto Rico.

And it is further ordered and decreed that upon the approval by the Court of the sale made in pursuance of this decree, the Master shall execute a deed in favor of the purchaser of the said property, and thereupon the said Central Altagracia Incorporated shall be forever shut out and debarred from any and all title and equity of redemption in and to said property.

San Juan, P. R., October 14, A. D. 1909.

(Signed)

B. S. RODEY, Judge.

193 *(Foot Note Attached to Entry of Decree in Journal.)*

To which action of the Court in thus entering the foregoing decree and order of sale of the property and in declining to hold that he is now the owner of all of the said plant and property subject to the rights of the Larragoiti heirs as set forth in his several bills of complaint herein, and in holding the Nevers & Callaghan claims superior to his rights, the said Ramon Valdes by one of his solicitors, Martin Travieso Jr., then and there duly objects and excepts.

And further, the Central Altagracia Incorporated, by its solicitors, in like manner duly objects and excepts to the actions of the Court in entering said decree and order of sale as aforesaid.

194 In the District Court of the United States for Porto Rico.

(Filed Nov. 4, '09.)

Equity. Nos. 564 and 565.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN,

Consolidated with

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Petition of Central Altagracia, Incorporated, for an Order Allowing an Appeal from the Final Decree Heretofore Entered in this Cause, to the Supreme Court of the United States.

Central Altagracia Incorporated feeling itself aggrieved by the Final Decree heretofore made and entered by this Court in the above cause, on the 14th day of October, A. D. 1909, whereby it was ordered, adjudged and decreed that the mortgage lien of the said Ramón Valdés under and by virtue of the said contracts of November 2, 1907, be and it is hereby established and declared on each and all of the properties, leases, rights and contracts hereinbefore described, for the sum of sixty five thousand dollars (\$65,000.00) with interest at 10% per annum from November 2, 1907.

And it is further ordered by the Court that the said lien be and it hereby is foreclosed and all rights of the said Central Altagracia Incorporated in and to all the said properties, rights, leases and contracts composing the Central Altagracia Incorporated as a going concern be and the same are hereby ordered sold to satisfy the said lien in favor of Ramón Valdés for the sum of \$65,000.00 and 195 interest as aforesaid, unless the Central Altagracia Incorporated pays to the said Ramón Valdés the said sum of \$65,000.00 and interest within 30 days from the entry of this decree, and for the reasons set forth in the assignment of errors which is filed herewith; and it prays that its petition for its said appeal may be allowed and that a transcript of the Record, proceedings and papers on which said rulings, orders and final decree were made, duly authenticated, may be sent to the Supreme Court of the United States, at Washington, District of Columbia.

(Sgd.)

F. L. CORNWELL,
Counsel for Central Altagracia, Incorporated.

196 District Court of the United States for Porto Rico.

Filed Nov. 4, '09.

Equity. Nos. 564 and 565.

RAMÓN VALDÉS

VS.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN,

Consolidated with

CENTRAL ALTAGRACIA, INC.,

VS.

RAMON VALDES and NEVERS AND CALLAGHAN.

Assignment of Errors.

Now comes Central Altagracia Incorporated, one of the defendants in cause No. 564 of the caption, and complainant in cause No. 565 of said caption, and appellants in the above entitled and consolidated causes, and assigns the following as errors committed by the Court aforesaid in the cause of the proceedings in said consolidated causes in said court.

I.

The Court erred in overruling the demurrer of Central Altagracia Incorporated to bill of complaint in cause No. 564 of aforesaid consolidated causes of action.

II.

The Court erred in ordering answer filed by Central Altagracia Incorporated, to bill of complaint, on or before the 26th day of July, 1909.

III.

The Court erred in ordering Central Altagracia Incorporated to proceed to trial in the aforesaid consolidated causes of action without allowing said Central Altagracia Incorporated an opportunity to except to answer of Ramón Valdés, or plead to the said Valdes' cross-bill, in accordance with the Equity rules.

IV.

The Court erred in ordering Central Altagracia Incorporated to proceed to trial in the aforesaid consolidated causes of action without allowing said Central Altagracia Incorporated opportunity to except to answer of Nevers & Callaghan, or plead to said Nevers & Callaghan's cross-bill, in accordance with the rules of Equity.

V.

The Court erred in not permitting and allowing Central Altamaria Incorporated time to sue out a commission to take the depositions of the several witnesses named in the petition and affidavit of N. B. K. Pettingill, Treasurer of the said Central Altamaria Incorporated, sworn out on the 27th day of July, 1909.

VI.

The Court erred in proceeding to a trial and hearing in the aforesaid consolidated causes before the issues were properly settled and without the presence and intervention of said Central Altamaria Incorporated.

VII.

The Court erred in overruling exceptions of Central Altamaria Incorporated to the answer of Ramón Valdés in suit No. 565, on September 7th, 1909.

VIII.

That the Court erred in not following the equity rules, promulgated by the Supreme Court of the United States, in the aforesaid consolidated causes of actions Nos. 564 and 565.

IX.

That the Court erred in entering a final decree herein
198 in favor of the said Ramón Valdés and Nevers and Callaghan
and against these defendants.

Wherefore, the defendant, Central Altamaria Incorporated, prays
the Honorable the Supreme Court of the United States to examine
and correct the errors assigned, and for the reversal of the said de-
cree, orders and rulings of the said District Court of the United States
for Porto Rico, entered in the above entitled consolidated causes,
and for the proper directions to said Court to proceed in accordance
with law and the equity rules.

And as in duty bound, it will ever pray.

(Sgd.)

CENTRAL ALTAMARIA, INCOR-
PORATED,

By N. B. K. PETTINGILL AND
F. L. CORNWELL.

Its Solicitors and Counsel.

199

Journal Entry, November 4, 1909.

564. Equity.

RAMÓN VALDÉS

VS.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN,

Consolidated with

565. Equity.

CENTRAL ALTAGRACIA, INC.,

VS.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

The above entitled consolidated causes which were recently tried together, come on for a hearing on the application of F. L. Cornwall this day duly made in open court, representing the Central Altagracia, Inc., that said corporation be granted an appeal to the Honorable the Supreme Court of the United States from the decision and decree herein, with supersedeas, and in that regard suggests that a bond of Two thousand five hundred dollars (\$2,500) is and ought to be sufficient, and states that he is ready and willing to tender a bond in that sum, Martin Travieso, Jr., appears for complainant, respondent and cross-complainant Ramón Valdes and the Court having heard said respective counsel with reference to said application and with reference to the amount at which a bond to act as a supersedeas in the premises should be fixed and being fully advised and in consideration of the fact that the Valdés lien amounts to about \$78,000, the outstanding Receivership debts to about \$18,000 and the Nevers & Callaghan claim to a like amount exclusive of costs of all kinds, states that the appeal will be granted upon proper written

application being filed therefor, and that if in addition supersedeas is desired, a bond with good and sufficient sureties relating to the party, and conditioned as may be proper and as required by law, in the sum of One Hundred and Fifty Thousand Dollars (\$150,000) must be executed within the time required by law by appellant in order to supersede the decree herein. To which action of the Court, in thus refusing to accept a nominal bond in the sum of Two thousand five hundred dollars (\$2,500) as so purposed to be tendered, and in so fixing the amount of the bond that shall stand as a supersedeas in the premises at the sum of One Hundred and Fifty Thousand Dollars (\$150,000) the said Central Altagracia, Inc., by its said counsel then and there duly objects and excepts.

Whereupon said counsel presents a written petition praying for the appeal as above set up, which is sent to the files and also an order therefor, which is also filed and signed and is entered as follows:

Order Allowing Appeal.

On motion of Frederick L. Cornwell, Esq., Solicitor for Central Altamaria, Incorporated, it is ordered that an appeal to the Supreme Court of the United States, from the orders, rulings and final decree heretofore filed and entered herein, be and the same is hereby allowed, and that a certified transcript of the record, exhibits, orders, stipulations and all proceedings herein be forthwith transmitted to the said Supreme Court of the United States.

It is further ordered that the bond on appeal in case no supersedeas is desired shall be a mere cost bond and is hereby fixed at the sum of three hundred (\$300.00) dollars, but that in case supersedeas is desired, then the bond shall be in the sum of one hundred 201 and fifty thousand (\$150,000.00) dollars, in either case to be conditioned and approved as required by law.

November 4, 1909. In open Court.

(Signed)

B. S. RODEY, *Judge.*

And thereupon said same counsel on behalf of said same applicant tenders written alleged assignments of error in the cause which the court also sends to the files.

202 In the United States District Court for Porto Rico.

(Filed Nov. 9, 1909.)

Equity. Nos. 564 and 565.

RAMÓN VALDÉS

vs.

CENTRAL ALTAMARIA, INC., and NEVERS & CALLAGHAN,

Consolidated with

CENTRAL ALTAMARIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

To the Clerk of the above entitled court:

You will please prepare a transcript of the record in the above mentioned consolidated causes, to be filed in the office of the Clerk of the United States Supreme Court, under the appeal heretofore allowed to said court, and include in said transcript of record the following pleadings, proceedings and papers on file, to wit:

Original Bill of Complaint No. 564, June 2, 1908.

Demurrer of Central Altamaria " 564, June 2, 1908.

Journal Entry, page 424 " 564, June 2, 1908.

Bill of Complaint " 565, June 2, 1908.

Journal Entry, page 424 " 565, June 2, 1908.

Order appointing Temporary Receiver, June 3, 1908.
Intervening Petition of Rowe, etc., July 20, 1908.
Journal Entry, page 451 (Double Caption), July 20, 1908.
Court's views, July 20, 1908.
Order of appointment of Permanent Receiver, July 22, 1908.
Appearance and Demurrer of Nevers and Callaghan, No. 565, July 23, 1908.

203 Journal Entry, page 471 (double caption), July 27, 1908.
 Stipulation staying proceedings, July 27, 1908.
Journal Entry (Mayaguez) (Double Caption), July 12, 1909.
Journal Entry (Mayaguez) (" "), July 17, 1909.
Amended Demurrer of Nevers & Callaghan, July 17, 1909.
Journal Entry (Mayaguez) (six cases included in caption), July 21, 1909.
Court's Memorandum, July 21, 1909.
Journal Entry (Mayaguez) (caption 565 only), July 22, 1909.
Amended Bill of Complaint, July 22, 1909.
Answer and Exhibits "A" and "B," July 24, 1909.
Motion of Nevers & Callaghan to be made parties defendant, July 26, 1909.
Answer and Cross-bill of Nevers & Callaghan (Case No. 565), July 26, 1909.
Answer and Cross-bill of Nevers & Callaghan to Cross-bill of Ramón Valdés, July 27, 1909.
Answer and Cross-bill of Ramón Valdés, July 27, 1909.
Affidavit of N. B. K. Pettingill, July 27, 1909.
Journal Entries (Mayaguez), July 27, 1909.
Journal Entries (Mayaguez).
Answer of Valdés to Cross-bill of Nevers & Callaghan, July 28, 1909.
Court's memorandum for files, July 28, 1909.
Replication of Valdés to Answer of Central Altagracia, July 28, 1909.
Replication of Valdés to Answer of Nevers & Callaghan, July 28, 1909.
Journal Entries (Mayaguez), July 28, 1909.
Journal Entries (Mayaguez), July 29, 1909.
Journal Entry, Aug. 2, 1909.
Journal Entry, Aug. 3, 1909.
Journal Entry, Aug. 4, 1909.
Memorandum of Court, Aug. 7, 1909.
Exceptions to Separate Answer of Nevers & Callaghan filed by Central Altagracia, Sept. 7, 1909.
Exceptions to Separate Answer of Ramon Valdes filed by Central Altagracia, Sept. 7, 1909.

204 Journal Entry, Sept. 18, 1909.
 Journal Entry, Sept. 25, 1909.
Findings of Fact and Law and Opinion on the merits, filed, Sept. 25, 1909.
Order appointing F. Fano Special Master, Oct. 9, 1909.
(Order regarding continuance of cases), Oct. 9, 1909.

Final Decree (and also see Journal after the signature on Final Decree), Oct. 14, 1909.

Petition for Appeal, Nov. 4, 1909.

Assignment of Errors, Nov. 4, 1909.

Journal Entry (which entry embodies the Order allowing Appeal), Nov. 4, 1909.

Copy of Precede.

Said transcript to be prepared as required by law and the rules of this court and the Supreme Court of the United States for filing in the office of the Clerk of said Supreme Court of the United States.

N. B. K. PETTINGILL,

F. L. CORMWELL,

Solicitors for Central Altamaria, Incorporated.

205 In the United States District Court for Porto Rico.

(Filed Nov. 5, 1909.)

Equity. Nos. 564 and 565.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN,

Consolidated with

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Motion for an Order Amending Final Decree in Above Consolidated Causes.

Now comes Central Altamaria Incorporated, by its solicitors of record, N. B. K. Pettingill and Frederick L. Cornwell, and states to the Court that Ramon Valdez, in the City of New York, New York, on the twenty-fifth (25th) day of October, A. D. 1909, acquired from R. L. Farnham, of Sullivan & Cromwell, as representative of the Estate of Joaquin Sanchez de Larragoiti, by purchase, the fee to the real property on which is situated the mill and permanent improvements of Central Altamaria Incorporated.

Your petitioner further states that said contract of sale was duly entered into on aforesaid twenty-fifth (25th) day of October, 1909, and that the consideration for said sale is Twenty-five Thousand Dollars (\$25,000.00), all of which will more fully appear in an affidavit of N. B. K. Pettingill herewith attached, marked Exhibit "A" and made part of this motion.

Therefore, your petitioner, Central Altamaria Incorporated, re-

205½ spectfully prays the Court for an order modifying its Final Decree of October 14th, 1909, in such manner as to hold that said Valdés in acquiring the fee in the manner aforesaid, in law and in equity and good conscience, acquired same for Central Altagracia Incorporated, and that his son, Ramón Valdés Jr. is holding same in trust for Central Altagracia Incorporated, and that the Final Decree be so amended and modified; and that the Special Master be directed to re-advertise and sell the fee of the property, as well as all interests he is now directed to sell, and that of such funds accruing from said sale that Ramón Valdés be reimbursed for the purchase price of said fee, or that at the public sale he be further authorized to bid at sale to the extent of his said mortgage lien and purchase price of fee of estate and for such other modifications and amendments as may seem meet and just.

N. B. K. PETTINGILL,

F. L. CORMWELL,

Solicitors for Central Altagracia, Incorporated.

206 (EXHIBIT A ON MOTION TO MODIFY FINAL DECREE.)

Filed November 5, 1909.

STATE OF NEW YORK,

City & County of New York, ss:

N. B. K. Pettingill, being first duly sworn, deposes and says that he is the Secretary and Treasurer and also the largest stockholder in the Central Altagracia, Incorporated, which is the Complainant in Suit Number 565 on the docket of the District Court of the United States for Porto Rico, and in his capacity as said Secretary and Treasurer, has helped to direct the proceedings in said suit, on behalf of said complainant; that affiant came to New York from Porto Rico during the last days of the month of September last and from that time entered into negotiations with R. L. Farnham, the (special) representative, in New York, of the heirs of Joaquin Sanchez Larragoiti, connected with the legal firm of Sullivan & Cromwell, attorneys for the executors of, and trustee under the last will of said Sanchez Larragoiti, looking to the acquirement, by purchase or otherwise, of the fee title to the land and buildings upon and in which is situated the property of said complainant corporation; that during the progress of said negotiations, affiant was informed by said R. L. Farnham that Ramón Valdés, one of the defendants in the suit aforesaid, was also negotiating for the purchase of the same; that affiant was not informed of the exact price at which said title could be purchased from said heirs, until the 22nd day of October instant, on which day affiant, in company with F. L. Cornwell, Esq.,

207 the President of said Central Altagracia, Incorporated, who who had joined him in New York, was informed by said Farnham that said heirs had agreed to the sale of said title for the price of \$25,000; that affiant and said Cornwell were further then and there, informed by said Farnham that said sale would be

made only for cash and not in any other manner, and that he would be bound to accept the first offer of that amount tendered, whether the same were tendered by representatives of said complainant or by said defendant, Valdes, or by any other person.

Affiant further says that thereupon he and the said Cornwell continued their effort to obtain the means to effect said purchase on behalf of said complainant corporation and for its benefit; that said Cornwell sailed for Porto Rico on the following day, leaving affiant to carry on said efforts in the city of New York, but that on the Monday following, to wit, the 25th of October instant, affiant was notified by said R. L. Farnham that further efforts for the purchase of said title would be useless, as the amount stipulated had been offered by said Ramón Valdes, with whom he had entered into a binding contract, but that, at the request of said Ramón Valdes, through his attorneys, the conveyance of said title was to be made to Ramón Valdes, Jr., the son of the defendant aforesaid.

Affiant further says that from the information so derived as aforesaid from said R. L. Farnham and from all the surrounding facts and circumstances, he believes and alleges that said title so to be conveyed to said Ramón Valdes, Jr. will be acquired by him for the benefit of his said father, and that the money for the payment of the same will be supplied by Ramón Valdes, Sr., and that to the knowledge of affiant the said Ramón Valdés, Jr., is a young man without property or resources except such as may have been given or transferred to him by his said father, and that he would be unable, 208 on his own account, to supply the funds necessary for the purchase aforesaid and that said title is to be so taken in the name of Ramón Valdes, Jr., in an effort to avoid the legal consequences, in the nature of a trust, which it was recognized would result, should said title be taken in the name of said defendant, Ramon Valdes, himself.

N. B. K. PETTINGILL.

Sworn to and subscribed before me, the undersigned Notary Public in the City and County of New York, this 29th day of October, 1909.

JAMES A. McNELUS,
Notary Public, Kings County, No. 27.

Certificate filed N. Y. County.

November 9, 1909.

564. Equity.

RAMÓN VALDÉS.

vs.

CENTRAL ALTAGRACIA, INC.,

and

565. Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS.

Comes now F. L. Cornwell, counsel for the Central Altgracia, Incorporated, and calls up his motion to modify the decree of the Court entered in the above entitled cause under date of October 14, 1909. The Court hears his argument in support of his motion, and that of Martin Travieso, Jr., representing Ramón Valdés, and also of Francis H. Dexter, representing Nevers & Callaghan, in opposition thereto, and at the end of the argument, the Court being fully advised, it is ordered that said motion be, and it hereby is, denied; to which action of the Court in so denying the motion, counsel for Central Altgracia, Incorporated, duly objects and excepts.

210 In the Supreme Court of the United States.

CENTRAL ALTAGRACIA, INC., Appellant,

vs.

RAMON VALDES et al., Appellees.

Petition for Allowance of Appeal and Supersedeas.

Mr. Justice Brewer, Supreme Court of the United States:

Comes the Central Altgracia, Inc., the appellant in the above entitled cause, and represents:

That on the 4th day of November, 1909, it applied for and entered its appeal in this cause from the final decree of the District Court of the United States for Porto Rico, entered on October 14th, 1909.

That said appeal was permitted to be taken by the Judge of said United States District Court sitting at San Juan, Porto Rico, on the same day, but any stay of the sale of the property of appellant by said decree ordered and fixed for the 27th day of November, 1909, was refused by said Judge, except upon the execution and filing of a supersedeas bond in the sum of \$150,000.00.

Petitioner represents that said cause was tried, the evidence closed, and final decree therein rendered, without any issues having been formed therein or proper pleadings filed to bring the same to issue, to all of which action counsel then and there excepted. That 211 at the time of said trial and submission of the cause to the Court, the time allowed by Equity rules Nos. 61 and 66 for the filing of exceptions or replication to the answer of appellee Ramon Valdes, had not expired, said answer having been filed in said cause only the day before said court required all parties to proceed with their evidence. That cross bills had at the same time been filed by appellee Valdes and by appellees Nevers and Callaghan, and no order had ever been made requiring the defendants named therein to plead thereto, nor had process issued thereon, nor had, in fact, any pleadings thereto been filed; by reason whereof said cause was wholly unprepared for the taking of evidence and trial thereon, and appellant could not, and hence did not, participate therein. The action of said Judge in ordering the parties to said cause to go to trial under such circumstances was in direct violation of the rights of appellant under the equity rules of this honorable Court, and the decree ordering sale of appellant's property is in effect a deprivation or taking of its property without due process of law, all of which more fully appears in the record and in the statement or abstract thereof hereto attached.

Petitioner further represents that said final decree adjudicated in favor of appellee Valdes an equitable mortgage upon the property of appellant, determined the amount of the same, foreclosed the lien thereof, and ordered the sale of said property in satisfaction of the same, all of which actions and adjudications were wholly without the purview of, and foreign to the relief prayed by, any of the pleadings on either side of said cause.

Petitioner further represents that the amount fixed by said Judge for a supersedeas bond, to wit, \$150,000.00, is wholly unnecessary inasmuch and as shown by the record the leasehold, machinery and plant so ordered to be sold, is of a value exceeding \$200,000.00, and

worth probably \$250,000.00, all of which property is in the 212 custody of the Court, through its receiver, who is now in possession thereof; that the security required pending determination of the appeal to this honorable Court is required only in an amount sufficient to pay the services of such officer as a caretaker of the property, and hence a bond of \$2,500.00 is ample to protect the interests of the appellees, as upon any fair sale of the property far more than enough to satisfy the liens under which it has been ordered sold (and approximating \$100,000.00) should be realized. That a bond of \$150,000.00 is wholly beyond the power of the appellant to furnish, as all its property is now in the custody of the Court, through its receiver, and this appellant is necessarily unable to secure such a large bond in Porto Rico or elsewhere, and was evidently fixed without due consideration of the particular circumstances of this case, and presumably largely based upon the idea of the judge below that this appeal was frivolous in its character and taken for the purpose of delay only, as expressly stated by said

judge in his order fixing such bond (Statement, p. II), while appellant avers that said appeal involves vital questions of property rights, and was taken because of gross violation of those rights by the judge below, especially in the particulars hereinbefore set forth, and because of the position in which appellant finds itself, as a result of such injustice, it is unable to furnish a bond in more than the maximum amount of \$2,500.00.

Wherefore, petitioner prays that appeal be allowed herein to operate as a supersedeas, upon the giving and approval of a bond by petitioner in the sum of \$2,500.00.

N. B. K. PETTINGILL,
A. B. BROWNE,
W. V. ROWE,

Counsel for Appellant.

213 CENTRAL ALTAGRACIA, INCORPORATED, Appellant,
vs.

RAMON VALDES and NEVERS & CALLAGHAN, Appellees.

On consideration of the foregoing petition, it is ordered that an appeal be, and the same is hereby, allowed to operate as a supersedeas on giving bond in the sum of Forty thousand dollars (\$40,000.00). If no supersedeas is desired, a bond for costs in the sum of Three hundred dollars (\$300.00) must be given.

DAVID J. BREWER,
*Associate Justice of the Supreme
Court of the United States.*

(Foregoing petition and order filed in office of Clerk of Dist. Court of U. S. for P. R. on December 6, 1909.)

214 (*Bond Filed in Clerk's Office of U. S. Dist. Court for P. R., December 6, 1909.*)

Know all Men by these Presents, That we, Central Altagracia, Incorporated, as principal, and American Surety Company of New York, as sureties, are held and firmly bound unto Ramon Valdes and George C. Nevers, George B. Ackerson and James G. Callaghan, as co-partners doing business under the firm name of Nevers & Callaghan, in the full and just sum of Three hundred dollars, to be paid to the said Ramon Valdes and George C. Nevers, George B. Ackerson and James G. Callaghan, as co-partners doing business under the firm-name of Nevers & Callaghan, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of November, in the year of our Lord one thousand nine hundred and nine.

Whereas, lately at a District Court of the United States for Porto Rico in a suit depending in said Court, between Ramon Valdes,

complainant, and Central Altagracia, Incorporated, and Nevers & Callaghan, defendants, a decree was rendered against the said Central Altagracia, Incorporated, and the said Central Altagracia, Incorporated, having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Ramon Valdes and George C. Nevers, George B. Ackerson and James G. Callaghan, as co-partners doing business under the firm-name of Nevers & Callaghan, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Central Altagracia, Incorporated, shall prosecute said appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

CENTRAL ALTAGRACIA, INCORPORATED, [SEAL.]

By N. B. K. PETTINGILL, *Secretary.*

AMERICAN SURETY COMPANY OF
NEW YORK. [SEAL.]

By H. E. WESCOTT, *Resident Vice President.*

Attest:

L. BERT NYE, [SEAL.]
Resident Assistant Secretary.

Sealed and delivered in presence of—

EVERETT POINDEXTER.
L. H. BERNER.

Approved by—

DAVID J. BREWER,
*Associate Justice of the Supreme
Court of the United States.*

215 In the District Court of the United States for Porto Rico.

No. 564 and No. 565.

RAMÓN VALDÉS

v.

CENTRAL ALTAGRACIA, INCORPORATED, and NEVERS & CALLAGHAN,

Consolidated with

CENTRAL ALTAGRACIA, INCORPORATED,

v.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Master's Report and Return of Sale.

(Filed December 2, 1909.)

To the Honorable Bernard S. Rodey, Judge of said Court:

In pursuance and by virtue of the Court's decree made in the above entitled cause and bearing date October 14th 1909, therein issued and under the seal of said Court, and to me directed, which said writ is hereto attached and herewith returned, in and by which decree it was among other things, considered, adjudged, ordered and decreed that all of the property of said Central Altagracia Incorporated, mentioned and referred to in said decree and hereinafter more particularly described should be sold by or under the direction of Francisco Fano, Esq., Special Master in Chancery of this court, in bulk and as a going concern and not in separate parcels, and in the manner therein directed and to satisfy the amounts due and to become due as in said decree stated for principal and interest of the receiver's certificates and obligations, the credits which were declared entitled to performance by said decree and the general indebtedness of said Central Altagracia Incorporated all as allowed in the decree

216 to be paid or as much thereof as such property would bring upon such sale, and that said Francisco Fano, Master aforesaid make such sale in accordance with the course and practice of this Court, and that at such sale any of the holders of the outstanding indebtedness of said Central Altagracia Incorporated might become the purchaser or purchasers at such sale; that all of the property ordered to be sold under said decree should be sold at public sale to the highest bidder at the Court-house door of the United States District Court for Porto Rico, at San Juan, P. R.

That the notice of said sale should be given by said master by advertisement thereof once a week for at least four successive weeks prior to the date of said sale in the newspapers known as *El Tiempo* and *El Boletín Mercantil* both published in the city of San Juan, Porto Rico, and also in the newspaper called *La Voz de la Patria* published in the city of Mayaguez, Porto Rico, all of said newspapers being published daily and having a general circulation in the Island

of Porto Rico, and that such notice should contain a statement of the time, place and hour of the sale and the terms and conditions thereof as in said decree prescribed and a description describing briefly the property to be sold, and that the purchaser at said sale should pay in cash on his said bid the receiver's certificates and obligations outstanding at the time of the sale, provided that he should not pay in less than the sum of \$3000 in cash to be applied to the payment of master's fees, compensation of the receiver, stenographer and other court costs and expenses. That said purchaser or purchasers of the property of said Central Altamaria incorporated should at the time of the sale is approved by the court pay into the court in cash an amount sufficient to pay in full all receiver's certificates and obligations existing not represented by the said bidder.

That upon the completion and confirmation of any sale made
217 under and in pursuance of said decree the said Francisco Fano, Master in Chancery as aforesaid should make and execute a deed in favor of the purchaser of said property, and that said Francisco Fano Master in Chancery as aforesaid make report of his acts and doings under said decree with all convenient speed after said sale shall have taken place.

I, Francisco Fano, as said master in chancery in said court, residing at the city of San Juan, within said district, was by said court so ordered to make sale of said properties in said decree mentioned, set forth and described, do respectfully certify and report that I advertised all and singular the said properties in said decree and hereinafter more specifically described, mentioned referred to and contained at and in front of the door of the court-house of said court in San Juan, Porto Rico, on the 27th day of November A. D. 1909, at the hour of two o'clock p. m. of that day as an entirety and as a going concern and not in separate parcels and upon the terms and conditions of sale as in said decree and the advertisement of the notice of sale thereunder for five consecutive weeks beginning on Monday the 18th day of October A. D. 1909, and ending the 15th day of November, 1909, said publication being made on Monday of each successive week prior to and preceding said sale in three daily newspapers of general circulation in the Island of Porto Rico, to wit: El Tiempo, El Boletin Mercantil both published in the city of San Juan, Porto Rico, and La Voz de la Patria, published in the city of Mayaguez, Porto Rico, all of which appears from the affidavits of the publishers of said papers attached hereto and marked exhibits "a" "b" and "c" and I further return certify and report that on said 27th day of November A. D. 1909, the day fixed by the decree of this court for the sale of said properties, upon which said sale was advertised to take place,

218 I the special master aforesaid, attended at the time and place fixed for such sale and exposed said properties for sale to the highest bidder under the terms and conditions in said decree and in said notice given and according to the rules and practice of this Court and the said properties were then and there by me as such special master in chancery struck off to Ramon Valdes, at the sum

of One hundred thousand dollars that being the highest and best bid made therefor.

I further certify and report that said Ramon Valdes has paid into the Court the sum of Three thousand dollars in cash to be applied to the payment of master's fees, compensation of the receiver, stenographer and other court costs and expenses as in said decree provided.

The expenses incurred by your master herein are as follows:

Cost of publication of notice of sale, by El Tiempo,	\$18.75
do do do El Boletin Mercantil,	29.44
do do do La Voz de la Patria,	32.82

81.01

Respectfully submitted,

F. FANO,
Special Master in Chancery.

219 *(Journal Entry, December 20, 1909.)*

Nos. 564 and 565. Equity.

RAMÓN VALDÉS

v.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN,

Consolidated with

CENTRAL ALTAGRACIA, INC.,

v.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

In the above entitled consolidated causes in accordance with previous notice to all counsel concerned, the matter of the confirmation of the Special Master's report of the sale and the settlement of all the receiver's certificates, bills and accounts due from the estate as well as the Court costs, etc., comes on to be heard at 3 o'clock p. m. on this day in open court. There were present, Francisco Fano, Special Master in Chancery appointed to make the sale, H. H. Scoville, Receiver of the properties involved in the litigation, Elton Warner, the expert accountant who has at divers times been employed in connection therewith, Martin Travieso, Jr., counsel for Ramón Valdés, the complainant in one of the above entitled causes and the respondent and cross-complainant in the other, and the said Ramón Valdés who is the purchaser at the sale in his own proper person, Francis H. Dexter, attorney for intervenors Nevers & Callaghan and incidentally representing the Larragoiti heirs, and N. B. K. Pettingill representing the Central Altagracia.

And the Court having heard the said Special Master Francisco Fano and the said Receiver and expert accountant regarding 220 all the transactions connected with this matter, and also having heard counsel for said Valdés and for Nevers & Callaghan,

approves and confirms the sale so made, and in that behalf signs the following order prepared by counsel for said Valdés, and which goes to the files, that is to say:

564 and 565. Equity.

"RAMÓN VALDÉS
vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN,

Consolidated with

CENTRAL ALTAGRACIA, INC.,
vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Decree Confirming the Sale and Ordering Deed.

This cause came on to be heard on the report of Francisco Fano, Special Master of Sale, made pursuant to the decree entered in this cause on the fourteenth day of October, 1909, and no valid exceptions having been made against the said report, the same is in all things and respects confirmed and approved.

It is therefore adjudged, ordered and decreed by the Court that all the right, title interest and claim of the parties to these consolidated causes in and to the property, rights, contracts, privileges and franchises sold by the said Special Master, be and the same is divested out of the Central Altagracia Incorporated and other parties to the consolidated causes, and each of them, and that the same be vested in the purchaser Ramón Valdés, his heirs and assigns, forever,

And it appearing to the satisfaction of the Court that the purchaser Ramón Valdés has paid the purchase price and the 221 cost of the cause and expenses of the sale, the said Francisco Fano, Special Master, is directed to make to the said Ramón Valdés a deed in accordance with this decree, and if necessary a writ of possession will issue to put the purchaser in possession.

B. S. RODEY, Judge."

And thereupon N. B. K. Pettingill, on behalf of the said Central Altagracia, and Francis H. Dexter, on behalf of Nevers & Callaghan, and incidentally on behalf of the Larragoiti heirs, object to the taking up of this matter or the confirmation of said report of sale or the settlement of any accounts connected with this receivership, for the reason as they say, that thirty days have not elapsed since the filing of the said Master's report. And the Court hears them in that behalf, and thereafter hears Martin Travieso, Jr., who contends that if any such rule of court is in force it applies only to a report of a Master in Chancery on the merits of a cause and not to a report of a mere sale by a Special Master appointed to make the same after a final decree. And the Court being fully advised rules

with said counsel, and overrules the objections of said counsel for the Central Altagracia and of said counsel for Nevers & Callaghan intervenors, and incidentally for the Larragoity heirs, to which action of the Court in so overruling said objections the said counsel then and there both severally duly object and except.

And thereupon H. H. Scoville, Receiver in the premises, presents a calculation showing the amount due from said receivership to date, including the preferred claims allowed by the Court in its final decree herein, which amounts to \$39,180.38, not including the claim of Ramón Valdés.

222 And thereupon the Court on application therefor allows the said expert accountant the sum of \$150 for work heretofore and now performed, and allows the said receiver the sum of \$150 for work heretofore and now to be performed, and allows the said Special Master Francisco Fano, the sum of \$250 together with his expenses \$81.01 and allows A. J. Harvey, on account of stenographer's bill in the premises \$120, and allows \$404.81 Clerk's 1% commission on the sum total, and allows \$150 estimated clerk's costs, which said amounts together with the amounts set forth in the final report of the Receiver herein amounts to the sum of \$40,486.20.

Therefore in accordance with the terms of the final decree heretofore entered in these consolidated causes it is ordered and adjudged that out of the proceeds of said sale there be paid into the Registry of this Court at once the said sum of \$40,486.20 for the liquidation of each and every of said claims, certificates, debts and allowances.

Thereupon said Martin Travieso, Jr., and said Ramón Valdés in open court agree that the latter shall pay out of his own pocket the cost of the deed of the property so to be executed and delivered by the said Francisco Fano, Special Master as aforesaid. Thereupon the said Martin Travieso counsel for said Ramón Valdés, aforesaid, submits and files a motion that as to the claim of Nevers & Callaghan amounting to the sum of \$18,154.84 and the claim of Benjamin S. Cornwell amounting to \$500 he be permitted because of having as he alleges taken an appeal from said portions of the decree that he be allowed in lieu of paying cash into the Registry for said

223 two items to deposit a good and sufficient bond in that be half, to which motion and request counsel for Nevers & Callaghan, Francis H. Dexter, then and there objects and to which motion as to the item for Benjamin S. Cornwell the said N. B. K. Pettingill, representing him, also then and there objects. Thereupon the Court announces and orders that all of the money so specifically required be paid into the Registry of the Court, be so paid by the purchaser Ramón Valdés, and further, announces that after it is so paid in, counsel for both parties as to the two items in question, will be given a full hearing at a short day and the Court will determine whether or not to pay the money over to said Nevers & Callaghan and said Benjamin S. Cornwell or to return the same to the said Valdés taking a bond in lieu thereof.

And thereupon the Court instructs the Clerk to hold the order of confirmation of the sale and ordering the deed to be made and delivered to the purchaser in abeyance until he has received the money

with which to pay all of the amounts herein ordered or intended to be ordered paid.

(Here ends Journal Entry of Dec. 20, 1909.)

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(Filed November 22, 1909.)

Equity. Nos. 564 and 565.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN,

Consolidated with

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Petition for Appeal and Supersedeas.

To the Honorable Bernard S. Rodey, Judge of the above Court:

Ramón Valdés, complainant and defendant respectively in the above consolidated causes, conceiving himself aggrieved by the decree made and entered by the above named Court in the above entitled cause under date of October 14th, 1909, providing for the sale of the property of Central Altagracia Incorporated and the mode of distribution of the proceeds of said sale, does hereby appeal from the said decree to the Honorable the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith; and he prays that this his petition for the said appeal may be allowed, and that a transcript of the record, proceedings and papers upon which the said decree and order were made, duly authenticated, may be sent to the Supreme Court of the United States. And the appellant further prays that an order be made fixing the amount of security which the said appellant shall give and furnish upon such appeal, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said appeal by the Supreme Court of the United States.

And your petitioner will ever pray, etc.

MARTIN TRAVIESO, JR.,
Solicitor for Ramón Valdés.

November 26, 1909.

564. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN,

Consolidated with

565. Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

The above entitled consolidated causes which were recently tried together came on this day in open court for a hearing on the application of Ramón Valdés, one of the parties, by his counsel Martin Travieso, Jr., that his said client be granted an appeal to the Honorable the Supreme Court of the United States from the decision and decree herein, with supersedeas, and requests that the Court fix a bond in that behalf, and he then and there files, in addition to said application, an assignment of alleged errors in the premises. Francis H. Dexter appears for his clients Nevers & Callaghan and incidentally in the interest of the Larragoiti heirs who are the owners of the fee to the land upon which the plant is situated. And the Court having heard said respective counsel regarding said application and with reference to the amount at which the bond to stand as a supersedeas should be fixed, and being fully advised, and in consideration of the fact that the Valdés lien amounts to about \$78,000, and the outstanding receivership debts to about \$18,000, and the Nevers & Callaghan claim to the like amount of about \$18,000,—all this exclusive of costs of all kind in the cause, states that the appeal will be and hereby is, granted, upon said applicant filing a good and sufficient bond conditioned as required by law and reading to

226 such party or parties as may be proper, in the sum of one hundred and fifty thousand dollars (\$150,000), and which bond, if it is intended that the application now made shall supersede the sale which is ordered for tomorrow, must be filed and approved in the manner required by law on or before ten o'clock of tomorrow, November 27th, instant; provided, that if said applicant desires the appeal without supersedeas, then and in such event he shall only be required to file a bond conditioned as aforesaid, in the sum of three hundred dollars, and in the latter case the sale will take place as already ordered. To which action of the Court in thus refusing to grant supersedeas in the premises unless the bond in the large sum aforesaid is filed, the said applicant by his said counsel then and there objects and excepts.

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("Præcipe for Addition to Record.")

(Filed January 4, 1910.)

In the United States District Court for Porto Rico.

No. 564.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA

and

No. 565.

CENTRAL ALTAGRACIA
vs.
RAMÓN VALDÉS et al.

The Clerk will please add to the Record on Appeal in the above entitled consolidated causes, as made up under a Præcipe heretofore filed, the following subsequent proceedings therein, to wit:

1. Motion on behalf of Central Altagracia to modify the final decree, together with affidavits therewith filed.
2. Journal entry containing order of court denying above motion, on November 9, 1909.
3. Petition for supersedeas, order of Justice Brewer thereon, appeal bond and approval,—all signed in Washington.
4. Report of Sale made by F. Fano, as Master in Chancery with date of the filing thereof.
5. Journal entry in said causes on December 20, 1909.
6. Order, if any, other than contained in above Journal Entry, confirming said Master's Report of Sale.
7. Petition of Appeal filed by Ramón Valdés, with date of filing and order allowing same, with its date.

228 The Clerk will please affix to said record as completed a new certificate to conform to the amendment thereof, and attach the citation, with its service.

F. L. CORNWELL,
N. B. K. PETTINGILL,
Solicitors for Central Altagracia.

229 In the District Court of the United States for Porto Rico.

No. 564. Equity.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, INC.,

and

No. 565. Equity.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMÓN VALDÉS et al.

I, John L. Gay, Clerk of the District Court of the United States, in and for the District of Porto Rico, do hereby certify the foregoing two hundred and twenty-eight typewritten pages, numbered from 1 to 228, inclusive, to be a full, true, and correct copy of the record and proceedings in the above and therein entitled causes, as the same remains of record and on file in the office of the clerk of said Court, as called for by the praecipe of the appellant filed on November 9, 1909, and by praecipe for addition to record filed January 4, 1910.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this nineteenth day of January, A. D. 1910.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.,
By A. M. BACON,
Deputy Clerk.

230 UNITED STATES OF AMERICA, vs.

To Ramon Valdes and George C. Nevers, George B. Ackerson and James G. Callaghan, as co-partners doing business under the firm-name of Nevers & Callaghan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the District Court of the United States for Porto Rico wherein Central Altagracia, Incorporated, is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable David J. Brewer, Associate Justice of the

Supreme Court of the United States, this 26th day of November, in the year of our Lord one thousand nine hundred and nine.

DAVID J. BREWER,
*Associate Justice of the Supreme Court
of the United States.*

231 On this seventh day of December, in the year of our Lord one thousand nine hundred and nine, personally appeared H. S. Hubbard U. S. Marshal for District of Porto Rico before me, the subscriber, John L. Gay Clerk of the District Court of the United States for the District of Porto Rico, and makes oath that he delivered a true copy of the within citation to Martin Travieso Attorney of Record for Ramon Valdes on Dec. 6th, 1909, and to Francis H. Dexter, Attorney of Record for Nevers & Callaghan on Dec. 7th, 1909, both at San Juan, Porto Rico.

H. S. HUBBARD,
U. S. Marshal for District of Porto Rico.

Sworn to and subscribed the 7th day of December, A. D. 1909.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.

Endorsed on cover: File No. 21,994. Porto Rico D. C. U. S. Term No. 196. Central Altamaria, Incorporated, appellant, vs. Ramon Valdes and George C. Nevers, George B. Ackerson and James G. Callaghan, Copartners, doing business under the firm name of Nevers & Callaghan. Filed January 31st, 1910. File No. 21,994.



IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1911.

Nos. 193 and 196.

RAMON VALDÉS, APPELLANT,

vs.

CENTRAL ALTAGRACIA, INCORPORATED, AND
NEVERS & CALLAGHAN,

AND

CENTRAL ALTAGRACIA, INCORPORATED, AP-
PELLANT,

vs.

RAMON VALDÉS AND NEVERS & CALLAGHAN.

**BRIEF ON BEHALF OF CENTRAL ALTAGRACIA,
INC., APPELLANT IN No. 196 AND
APPELLEE IN No. 193.**

N. B. K. PETTINGILL,

FREDERICK L. CORNWELL,

Counsel for the Central Altagracia, Incorporated.



IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1911.

Nos. 193 and 196.

RAMON VALDÉS, APPELLANT,

vs.

CENTRAL ALTAGRACIA, INCORPORATED, AND
NEVERS & CALLAGHAN,

AND

CENTRAL ALTAGRACIA, INCORPORATED, AP-
PELLANT,

vs.

RAMON VALDÉS AND NEVERS & CALLAGHAN.

**BRIEF ON BEHALF OF CENTRAL ALTAGRACIA,
INC., APPELLANT IN No. 196 AND
APPELLEE IN No. 193.**

STATEMENT OF CASE.

These are cross-appeals in two causes brought separately in the District Court of the United States for Porto Rico by the respective parties who are appellants in this court, but con-

solidated by the court below for the purposes of the receivership which was prayed for in both bills of complaint and for the trial of the issues (Record, page 15).

The above reference and all succeeding references in this brief refer to the pages on the printed record in No. 196, unless otherwise specified. The Central Altamaria, Incorporated, will also, for convenience, be referred to as "the Central," and the copartnership, which is one of the appellees in each appeal, by the name of its senior partner, "Nevers." As the Central is interested in only a part of the questions raised by the assignment of errors as it appears in No. 193, this brief will be first devoted to the errors alleged on behalf of the Central as appellant in No. 196, afterwards discussing under separate heads such of the alleged errors in No. 193 as affect its rights.

Both suits consolidated in the court below were in equity and resulted in a decree declaring Valdés, appellant in No. 193, the holder of an equitable mortgage upon the property of the Central, not confining the lien of that supposed mortgage to the property described in the instruments upon which it was based, and ordering the sale of all the property of the Central to satisfy the same as well as a judgment which Nevers had obtained and the unsecured claims of its remaining creditors, in the order specified in the decree. As the contentions here made on behalf of the Central are largely based upon the character of the respective bills of complaint, the regularity of the proceedings in the consolidated suit, and the power of the court to make the decree it did, a detailed statement of the history and character of the litigation seems necessary.

In the year 1905 the Central was incorporated for the main purpose of grinding sugar-cane and manufacturing sugar at a point near the city of Mayaguez, in the island of Porto Rico, and for that purpose at once acquired a leasehold for twenty years of a small tract of land (22 acres), upon which was an old-styled sugar-mill, and proceeded to purchase the necessary machinery to modernize this mill. This was partially accomplished and the crop of 1906

was ground. Thereafter the Central found it necessary to acquire still more machinery, and for that purpose effected a loan from Valdés in March, 1907, to the amount of \$35,000, payable in April, 1908. Valdés also acquired some stock and was made a director and vice-president of the corporation.

In October of the same year, 1907, the officers of the Central entered into two other contracts with Valdés, the character and legal effect of which are disputed and which were at the foundation of the litigation which ensued and from which these appeals have resulted. Both these contracts were notarial instruments, drawn according to Spanish form and custom, but executed in the Spanish language before a notary public of New York, who carried what the Spanish notaries called a "protocol." The first was dated October 28, 1907, and was in form a sale of the leasehold and machinery of the Central to Valdés for a price of \$65,000, of which it was recited that \$35,000 had already been paid by the loan of the previous March (pp. 46-57). The second contract was dated five days later, November 2, was in form a conditional resale of the identical property by Valdés to the Central for the same identical price, to be payable in four annual installments, with 10 per cent interest, on the first day of April of the years 1908, '9, '10, '11, and contained the additional provision that the title of the property was to remain in Valdés until all the installments had been paid (pp. 58-62).

At the same time, and during the visit of the officers of the Central and Valdés to the city of New York for the purpose represented by these contracts, meetings of the board of directors of the Central were held in that city and Valdés was elected its president and authorized to appoint a general manager. With Valdés thus put in control, the Central entered upon the cane-grinding season of 1908, but when the first payment under the contract of November 2, 1907, fell due in April, 1908, Valdés, its creditor, had so managed its finances that no money was available to satisfy it, and at the end of the crop in May it was still unpaid. Thereupon on the 2d day of June, 1908, Valdés filed a suit at law in the

court below, setting out simply the terms of the contract of November 2, 1907, and the non-payment of the overdue installment, alleging that thereby the right of the Central to repurchase had been forfeited and the right to take possession of the property had accrued to him, and praying that such possession be adjudged to him.

On the same day, June 2, Valdés filed a suit upon the chancery side of the court below, setting forth the same contract and its breach by non-payment, his right of possession thereunder, and the pendency of the suit at law which he had just filed. He further alleged that the Central was largely indebted to other parties and was insolvent, that Nevers had obtained a judgment against it under which a levy of execution had been made and a sale was threatened, and that the business of the Central required the making of new contracts during the months of June, July, and August for the grinding of the next crop. The only prayers were that a receiver be appointed to take charge of the factory and machinery and to manage the same under the orders of the court pending the decision of his suit at law, and that such receiver be authorized to make contracts for cane, to advance money on such contracts and to borrow money upon receiver's certificates for that and other necessary purposes (pp. 1-5).

On the same day, June 2, the Central also filed its bill of complaint on the chancery side of the court against Valdés, the judgment creditor, Nevers, setting forth with more detail all the business transactions above related between itself and Valdés, but alleging that the two contracts of October 28 and November 2, 1907, were parts of a single contract intended to secure to Valdés the repayment of money which he had agreed to advance for the purchase of machinery and other purposes, as in said bill specifically alleged, and charging that as a part of said agreement Valdés was to be elected president of the company at a salary of \$3,000 per year, be allowed to name the manager, and was to receive in addition to the interest specified a bonus of 150 shares of its capital stock. The bill then alleged that this agreement had been

carried out on behalf of the Central by the issuance to Valdés of the stock, his election as president, and the placing him in active management and control of its business; that Valdés had taken advantage of his control to mismanage its affairs, had destroyed its credit by publicly claiming to be the owner of its property and by buying all machinery and making cane contracts in his own name, had been guilty of gross extravagance and mismanagement of its factory and finances, had wholly failed, although in entire control of its finances, to provide for the payment of the installment due upon his own loan, and had finally brought the suit at law against it, and that he had also failed to make any provision for the judgment obtained by Nevers, who were threatening to sell the machinery of the Central upon their execution thereunder.

This bill of the Central contained all the other allegations pertinent to the appointment of a receiver and prayed for such appointment "to carry on its said business for the benefit of its creditors until its debts can be discharged or properly funded, so that both creditors and stockholders may be secured," with the powers usual in such cases (pp. 6-11).

Application for the appointment of a receiver was simultaneously made upon these respective bills of complaint, and on the following day a temporary custodian was appointed to hold until the return of the judge of said court, who was about to depart on a short trip to the States (pp. 12-13). Upon his return that custodian was appointed receiver with full powers and the two causes ordered consolidated "for all purposes of actual hearings and trial," but the parties were to "make up the actual issues under the separate titles and numbers" (p. 15), and the formal order subsequently signed (pp. 19-23) closed with this paragraph:

"And, lastly, it is hereby ordered that, in consideration of the controversies which the court can see are possible to arise between the conflicting interests represented in this litigation and of the importance to the conservation of said property to postpone such controversies for the present, any delay on the part of any of the parties hereto or of the stockholders of said

Central Altagracia in asserting by suit supposed rights or liabilities as between themselves or against one another, during the pendency of this receivership, shall not be considered or held to be equivalent to or in the nature of laches in the assertion of such rights or the claim of such liability."

Pursuant to this understanding the demurrer of the Central to Valdés' bill (p. 6) and that of Nevers to the bill of the Central (p. 23) remained dormant, and Valdés presented no defense whatever to the bill of the Central for nearly a year, or until the 12th day of July, 1909, on which day a preliminary "conference" was held by the court upon "The Altagracia Cases," and five days later the court announced that "it will make a statement as to its determination on Monday next" (p. 25). This statement was not made, however, until Wednesday, July 21, when the journal entry shows that a memorandum was filed stating the court's intention "of causing immediate issue to be raised on the pleadings" so as "to bring the litigation * * * to an end" (p. 27). No opportunity was given counsel for the Central to be heard in support of its demurrer, but the same was incontinently overruled and it was required "to answer fully on or before Monday, the 26th instant, so that a trial of the issue thus raised can be begun upon the following day before the court without the intervention of an examiner or master" (p. 28). The memorandum then filed also contains the following admonition (p. 31):

"The court now desires to notify all counsel and parties that it is not inclined to tolerate any interference with its program as here indicated, or at least with its determination to bring this unfortunate situation to a speedy end. Nor will it permit the pretended dissatisfaction or impatience of any of the parties to prevent such speedy determination of the matter. But this is not intended to mean that it is not willing and ready to receive all proper and respectful suggestions of modifications in the program as it progresses with a view to facilitating matters, but on the contrary it invites the aid and help of counsel and hopes that it will receive the same to the fullest extent that all counsel may be able to give it."

Counsel for the Central, desiring to comply as far as they reasonably could with the desires and directions of the court, filed on July 22 an amended bill of complaint (pp. 33-40) and on the morning set for the trial, July 27, filed its answer to the bill of Valdés (pp. 40-62). Meantime, on the 26th, Nevers had filed an answer and cross-bill to the bill of the Central (pp. 64-5) and on the 27th his answer and cross-bill to the bill of Valdés was filed (pp. 65-9), while on the same day Valdés filed his answer (pp. 70-7) and cross-bill (pp. 77-82) to the amended bill of the Central.

Under the above condition of the pleadings the consolidated cause was called for trial at Mayaguez (where the court had been sitting since July 12) on the 27th day of July, whereupon the Central filed the affidavit of its Treasurer (who was also of its counsel) setting forth reasons why it could not safely go to trial at that time (pp. 82-5), and upon that ground and because of the state of the pleadings objected to proceeding and asked a postponement. The journal of proceedings (p. 86) recites that upon the presentation of this affidavit the court heard argument and at its conclusion stated to counsel for the Central—

"that the matter has been pending for more than a year and that counsel had full notice of the court's intention to press the matter to issue and trial, and that it is not disposed to delay matters at this time when the admissions of the pleadings are so broad that the proofs available here in Porto Rico are probably sufficient, and that the amended complaint already on file in suit No. 565 and the answer thereto and the answer recently filed in suit No. 564, as well as the cross-bill also recently filed in suit No. 565 make as many allegations and admissions as that the real issue between the parties can be plainly seen, and that in the opinion of the court enough proof is available here in Porto Rico * * * and hence the court requires that the causes proceed and gives the said complainant in suit No. 565 until tomorrow morning within which to file his exceptions to the answer and his answer to the cross-bill in said suit, if he shall choose to do so," etc.

As the taking of evidence was, under this generous proposition, postponed for one day, Valdés improved the opportunity to present and file on the morning of July 28th his answer to the cross-bill of Nevers (pp. 87-8), and replications to the answers of the Central and Nevers to his own bill, (pp. 90-1.) At the same time counsel for Nevers amended "the answer and cross-bill by them filed to the cross-bill of Valdés" (p. 92), and the judge filed another "memorandum" (pp. 88-90) containing similar recitals to those of the Journal of the day before, after which the following paragraphs occur:

"Thereupon Messrs. Pettingill and Cornwell, attorneys for the Central Altagracia, stated that they withdrew any statement they may have heretofore made in the cause in that regard and desired it to be understood that they would not except to the answer in suit No. 565 or plead or answer to the cross-bill therein save and except within the time which they contended the rules governing this court of equity give them, and would stand upon what they consider their rights in that regard.

"The court thereupon announced if such was their determination, the court would proceed in the absence of such pleadings on the bills and answers this morning with the hearing of the case.

"And now, on this 28th day of July, 1909, all of said counsel as aforesaid being present, and the foregoing statement having been read in their hearing, N. B. K. Pettingill, counsel for the Central Altagracia, in response to the same stated that he objected to proceeding to take any evidence in any of the causes at this time or the testimony of any witnesses because the same are not at issue or in condition for the taking of evidence, and objected to the taking of any such evidence until the issues in said causes are made up in accordance with the rules of practice applicable to equity causes. Which objection was overruled by the court on the ground that the action called for thereby is not necessary; * * * To which ruling of the court counsel for the Central Altagracia excepted, and stated that in pursuance of the position taken he was not ready to proceed with the

taking of evidence. But the court proceeded with the trial, the stenographer having complete notes of all that took place."

The journal entry of that day repeats some of the statements of the memorandum and shows that the taking of evidence was proceeded with, "the complainant Central Altadecia by its said counsel refusing to proceed" (pp. 92-3). Subsequent entries show that the taking of evidence on the part of Valdés and Nevers was continued the following day (p. 93), and then adjourned to be closed at San Juan on August 2nd, where it was continued on August 2nd and 3rd and closed on the 4th (pp. 94-6).

Eight weeks after the testimony had been closed and arguments "of counsel appearing" heard, the court rendered its decision (p. 102), filing therewith a "Statement of Findings of Fact and Law and Opinion of the Court on the Merits" (pp. 103-112), and directed that a final decree be prepared accordingly, which decree was finally signed and entered three weeks later, October 14, 1909 (pp. 113-120).

This decree first recited the various steps of the litigation and then described, *not* the property solely which was included in the contracts made with Valdés, but *all* the property and assets of the Central corporation. It then declared that "the legal effect of the contracts of October 28 and November 2, 1907, * * * was to create an equitable mortgage or lien over *the said property*" of the Central for the sum of \$65,000 with 10% interest, and that "as to the other amounts claimed by said Ramón Valdés he is but a general creditor." It then proceeded to declare the lien of Nevers by judgment and execution superior to that of Valdés under his equitable mortgage, and to adopt the report of an accountant as to the other creditors of the Central and the several amounts of their unsecured claims, although the same had been determined simply from the books without notice to, or the consent of, any of those creditors, adjudicating the amounts so reported as the amounts severally legally due. It then declared that the Central had defaulted in the payment to Valdés of two instalments of principal and interest "and that

the said mortgage or lien should be foreclosed and the sale of the said property should be decreed to answer to the terms of the said contracts." Then, after adjudging that the mortgage lien "be and it hereby is established and declared on each and all of the properties, leases, rights and contracts *hereinbefore described*," it proceeds:

"And it is further ordered by the court that the sail lien be and it hereby is foreclosed and all rights of the said Central Altagracia, Incorporated, in and to all the said properties, rights, leases and contracts composing the Central Altagracia, Incorporated, as a going concern be, and the same are hereby ordered sold, to satisfy the said lien in favor of Ramón Valdés for the sum of \$65,000.00 and interest as aforesaid, unless the Central Altagracia, Incorporated, pays to the said Ramón Valdés the said sum of \$65,000.00 and interest within 30 days from the entry of this decree."

The decree then proceeded to provide for the manner of sale and the order in which the debts fixed by the decree should be satisfied from the proceeds, named November 27, 1909, as the day of sale, and declared that upon its approval the Central should be "shut out and debarred from any and all title and equity of redemption" in the property sold.

From this decree the Central prayed an appeal on the 4th day of November following (p. 121), but, as the court fixed the penalty of a supersedeas bond at \$150,000 (p. 124), it was unable to perfect the appeal thus allowed. On the 5th day of November a motion on behalf of the Central to modify the decree was made (pp. 127-9), which was denied by the court (p. 130). Thereupon a copy of the record was obtained and an application for appeal and supersedeas made to Mr. Justice Brewer (pp. 130-2) and by him allowed, bond for supersedeas being reduced to \$40,000 (p. 132). As this amount was still beyond the Central's power to furnish under the circumstances, a bond simply for costs was finally given, which was approved by Justice Brewer (p. 133) and a citation signed by him (p. 142). Prior to the sale Valdés also entered his appeal from certain provisions of said decree

(p. 139), but, as he also failed to furnish a supersedeas bond (Record in No. 193, p. 110), the sale proceeded as directed in the decree (pp. 134-6) and Valdés was the only bidder. The sale was confirmed and a deed ordered made to him on December 20, 1909 (p. 137).

An assignment of errors was filed on behalf of the Central at the time of entering its appeal (pp. 122-3), which we now substantially re-assign, with some omissions and some amendments in the way of more particularity, in the following form:

Assignment of Errors.

I.

The court below erred in requiring the Central to proceed to trial in the consolidated causes without allowing it the time fixed by Equity Rule 61 for electing whether to except for insufficiency to the answers of Nevers & Callaghan and Valdés, or either of them, or, electing not to except, the time fixed by Rule 66 for filing the general replications to such answers.

II.

The court erred in requiring the Central to proceed to trial in said causes, having permitted the filing on the day set for such trial of cross-bills by Nevers & Callaghan and Valdés, without acquiring jurisdiction of said Central upon said cross-bills either by substituted service or otherwise.

III.

The court erred in requiring said Central against its protest to proceed to trial in said causes without allowing it the period fixed by rules 17 and 18 for pleading, answering or demurring to the cross-bills filed by Nevers & Callaghan and Valdés respectively against said Central.

IV.

The court erred in proceeding to a trial and hearing in said causes against the objection and protest of the Central before the issues were duly and legally made up and without the presence and intervention of the Central.

V.

The court erred in refusing to allow the Central a period of three months within which to take its evidence, as provided in equity rule 69.

VI.

The court erred in requiring the Central to produce and present its evidence orally before the court without the intervention of an examiner or master against its protest and contrary of the provisions of equity rule 67.

VII.

The court erred in not granting the Central's motion and request for time to sue out a commission to take the depositions of the several witnesses named in the affidavit of its treasurer and counsel on July 27, 1909.

VIII.

The court erred in decreeing that Valdés was entitled to an equitable mortgage upon any property of the Central.

IX.

The court erred in decreeing that the so-called equitable mortgage was a lien upon property not described or included in the contracts upon which such equitable mortgage was founded.

X.

The court erred in decreeing a sale of the property of the Central upon any ground, because such a disposition of the property was not prayed for by, or within the purview of, either of the bills of complaint in said consolidated cause.

XI.

The court erred in decreeing the sale of any property not included in the contracts held to constitute the equitable mortgage.

XII.

The court erred in attempting by its decree to marshal all the assets of the Central and distribute them among its creditors as on a dissolution of its corporate existence.

XIII.

The court erred in decreeing that the Central had defaulted in the payment to Valdés of two installments of principal and interest under the terms of the contracts which were held to constitute the equitable mortgage.

XIV.

The court erred in not decreeing that the loan contract between the Central and Valdés was a usurious one, by reason whereof Valdés could recover no interest thereon according to the law of Porto Rico.

XV.

The court erred in denying the motion of the Central to modify the final decree because of matters occurring after its entry.

ARGUMENT.

I.

Central Entitled to Periods Fixed by Equity Rules for Making up Issues.

In order fully to appreciate the arbitrary character of the action of the court below in forcing a trial at the time it did, we ask this court to bear in mind these vital facts: (1) a receiver had been appointed and had carried on the business of the Central at the request of both parties for nearly a year, under bills of complaint which looked to the accomplishment of adverse but specific ends thereby; (2) the closing paragraph of the order appointing that receiver specifically invited (p. 22) all parties to postpone their controversies during the continuance of the receivership and declared that "any delay * * * shall not be considered * * * in the nature of laches in the assertion of such rights;" (3) pursuant to that suggestion, the two demurrers which had been filed at the time of the making of the order (pp. 6, 23) remained dormant and no further steps in either cause, aside from the receivership, were taken from July 23, 1908, until July 12, 1909; (4) the only purpose of the bill filed by Valdés was to maintain the *status quo* in aid of his suit at law for the possession, which suit at law had not yet been tried and the demurrer in which was by the omnibus order of July 21st "permitted to remain in abeyance * * * until issue in 564 and 565 (the two equity causes) is decided" (p. 28); and (5) all the suits involved in this appeal were pending at San Juan, while the proceedings which will now be detailed took place at a term held in the city of Mayaguez.

These proceedings opened with "an evening session with a view to determining what shall be done with reference to the Central Altagracia property" on Monday, July 12 (p. 25), when it was "determined to proceed with the argument of the demurrer in cause No. 563 (Valdés' suit at law) on

Saturday next at noon and dispose of the same, when the court will take up the other matters in such order as it may deem best." On that Saturday "court and counsel consult together" and "court announces that it will make a statement as to its determination on Monday next" (same page). It was, however, Wednesday, July 21st, before the promised statement appeared (pp. 28-32), the net result of which, as appears from the Journal entry (p. 27), was the court's declaration of "its intention to bring the litigation, receivership, etc., regarding this property to an end and of causing *immediate issue* to be raised on the pleadings for that purpose"—to attain which end all demurrers (except that in No. 563, which was held in abeyance) were overruled without any chance of argument and "respondent in each case required to answer on or before Monday, the 26th instant, so that a trial of the issue thus raised can be begun upon the following day." Parties were, however, permitted immediately to amend their bills and to file cross-bills in addition to answers, "but in such case the latter shall be considered as denied and issue made as may be proper so that the trial may proceed notwithstanding" (p. 28). In the statement then filed the court stated the motives inducing it to adopt this course and inserted the admonition to counsel that it was not "inclined to tolerate any interference with its program as here indicated," etc. (p. 31), which was quoted in full in our statement of the case.

Counsel for the Central, although they may have during these conferences and proceedings indicated some degree of what the court describes as "dis-satisfaction or impatience," still believed the court would be amenable to reason and the law and, desiring to show their willingness to go as far as they reasonably could without positive injustice to the Central, proceeded to follow the directions of the court by filing an amended bill on the 22nd and an answer to the bill of Valdés on the 26th. On or before the 27th, which was the day then set for the beginning of the trial, pleadings had been filed by the other parties, so that the record on that day stood as follows:

In suit No. 564, in which Valdés was the complainant, answer of the Central (p. 40), answer and cross-bill of Nevers (p. 65).

In suit No. 565, in which the Central was complainant, answer of Valdés (p. 70), cross-bill of Valdés (p. 77), answer and cross-bill of Nevers (p. 64), "answer and cross-bill" of Nevers to the cross-bill of Valdés (p. 65), affidavit for postponement (p. 82).

No order regarding either cross-bill was made or asked for other than permission given to file (pp. 32, 85).

On the morning of the 27th, counsel for the Central presented its motion for a postponement, based upon the state of the pleadings and the affidavit showing the necessity of depositions of witnesses, which the court denied, stating according to the Journal that:

"the matter has been pending for more than a year and that counsel had full notice of the court's intention to press the matter to issue and trial, and that it is not disposed to delay matters at this time when the admissions of the pleadings are so broad that the proofs available here in Porto Rico are probably sufficient * * * and (the Central) if it sees fit, may file exceptions to the answer and an answer to the cross-bill, but that in the opinion of the court the same would be mere formalities, as the opposite pleadings of each of the parties in said causes reduces the issues almost entirely to questions of law, and hence the court requires that the causes proceed and gives the said (Central) until tomorrow morning within which to file its exceptions to the answer and its answer to the cross-bill in said suit, if he shall choose to do so," etc.

A postponement of one day being thus brought about, Valdés proceeds on the 28th to file his answer to the cross-bill of Nevers (p. 87) and his replications to the answers of the Central (p. 90) and of Nevers (p. 91). At the same time the court filed another memorandum, reciting the occurrences of an informal meeting the previous evening, and continuing (p. 89):

"And now, on this 28th day of July, 1909, all of said counsel as aforesaid being present, and the foregoing statement having been read in their hearing, N. B. K. Pettingill, counsel for the Central Altamira, in response to the same stated that he objected to proceeding to take any evidence in any of the causes at this time or the testimony of any witnesses because the same are not at issue or in condition for the taking of evidence, and objected to the taking of any such evidence until the issues in said causes are made up in accordance with the rules of practice applicable to equity causes."

The Journal entry of the subsequent proceedings of the same day shows that (p. 93):

"thereupon the court proceeds with the trial and the complainant by its said counsel refusing to proceed, the court hears evidence for the respondents Nevers and Callaghan, and also evidence for the respondent Ramón Valdés," etc.

We submit that the objections thus made by counsel for the Central were well founded and should have prevailed. The chancellor below seems to have regarded rules of pleading and rules of practice in equity causes as of little moment and himself as not bound by them so long as he did what he believed to be justice. But this court has so often decided that equity jurisprudence is an orderly system to be administered according to well-settled principles and uniform rules that citation of authority is superfluous. And it has also held that the Rules of Practice prescribed by it are to be obeyed and parties have a right to depend upon them:

"We are of opinion that the decree is perfectly regular without the service of any copy, according to the rules prescribed by this court, in equity causes, to the circuit courts; and no practice of the circuit court, inconsistent with those rules, can be admissible to control them."

Bank of U. S. *vs.* White, 8 Pet., 262, 269.

"They are as obligatory upon the courts of the United States in Louisiana as they are upon all other

United States courts, and the only modifications or additions which can be made in them by the circuit or district courts are such as shall not be inconsistent with the rules prescribed. * * * The parties to suits in Louisiana have a right to the benefit of them."

Story vs. Livingston, 13 Pet., 359, 368.

"The equity practice of the courts of the United States is governed by the rules prescribed by this court under the authority conferred upon it by the act of Congress and is the same in all the States."

Betts vs. Lewis, 19 How., 72.

So also by the Circuit Court of Appeals:

"The rules promulgated by the Supreme Court regulating the practice in chancery causes were adopted in pursuance of authority conferred by an act of Congress (R. S., Sec. 917) and for that reason they have the force and effect of law. No district or circuit court of the United States has power to adopt a practice inconsistent with those rules or to disregard their provisions."

N. W. Mut. Life Ins. Co. vs. Keith, 23 C. C. A., 196.

Let us see how many of these rules were ignored, and in what respects, by the court below in the proceedings above outlined:

(1) The Central was never served with process upon the cross-bills.

By Equity Rule 7 it is provided in part:

"The process of subpoena shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill;" etc.

It is true this rule is modified in case of cross-bills and other dependent suits when the parties are already before the court to the extent of allowing "substituted service" upon attorneys of record; but that does not dispense with the ne-

cessity of service altogether, as is shown by the following language of the courts:

"The application of the rules for substituted service is denied to cross-bills setting up facts not alleged in the original bill, and which new facts, though they relate to the subject-matter of the original bill, are made the basis for affirmative relief."

Fidelity, etc., Co., *vs.* Mobile, etc., Co., 53 Fed. Rep., 850.

"In the three last instances *i. e.*, bills to restrain actions at law, the reform instruments, and cross-bills) *service* upon the attorneys who appeared for the parties in the actions at law, or, in case of a cross-bill, who appeared for complainant in the original bills, is held to be sufficient for all purposes to bring the party before the court."

Shainwald *vs.* Davids, 69 Fed. Rep., 701.

See also:

Bowen *vs.* Christian, 16 Fed. Rep., 729.

Johnson, etc., Co., *vs.* Union, etc., Co., 43 Fed. Rep., 331.

And we find no decision holding that this power to make substituted service upon the agent instead of the principal carries with it any right to vary the time after such service allowed for appearance and answer by Rules 17 and 18, even had such substituted service been ordered. But no order whatever was made or asked for touching service of defendants to the cross-bills; hence the court never acquired jurisdiction thereunder.

(2) The Central was entitled to time to plead, demur or answer to these cross-bills, as provided in Rule 18.

It may be that the filing of cross-bills by Valdés and Nevers was a matter of choice rather than necessity; but, having elected to file them, and the court having permitted them to be filed, the orderly rules of pleading applied to them, and Rule 18 says:

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"It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shown, by a judge of the court upon motion for that purpose, to file his plea, demurrer, or answer to the bill in the clerk's office, on the rule day next succeeding that of entering his appearance."

As the theory of substituted service is that defendant to a cross-bill is already before the court, it would seem that in such case the above rule would mean the rule day succeeding the substituted service—but it could not be an earlier day without violating its express provisions. Hence the court could not have required a pleading to the cross-bills earlier than the rule day in August.

(3) The Central was entitled to the period fixed by Rules 61 and 66 to determine the manner of joining issue on its own bill.

The bill of the Central (No. 565) was answered by Nevers on July 26th and by Valdés on July 27th. Rule 61 provides that:

"After an answer is filed on any rule day, the plaintiff shall be allowed until the next succeeding rule day to file in the clerk's office exceptions thereto for insufficiency, and no longer, unless," etc.; "and if no exceptions shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient."

And Rule 66 provides:

"Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto on or before the next succeeding rule day thereafter, and in all cases where the general replication was filed the cause shall be deemed to all intents and purposes at issue, without any rejoinder or other pleading on either side."

As answers are, under Rule 18, due to be filed on rule days, it may well be contended that, where a party sees fit

to file them sooner, the time within which the opposite party must plead thereto is not accelerated but does not begin to run against him until that rule day arrives. Hence that it is only after the answer was on the files "on a rule day," that is, the rule day in August, that the time allowed complainant "until the next succeeding rule day" begins to run.

However that may be, complainant's exceptions to those answers could not be due under rule 61 earlier than the rule day in August; then, in case it should have elected not to except, its general replication under rule 66 would have been due on the rule day in September—before which time the evidence had been closed and the cause was in the hands of the court for final decision. Therefore the procedure followed was clearly "inconsistent with those rules."

(4) The court had no right to proceed with the evidence before the pleadings had been brought to an issue.

There is nothing in the equity rules indicating the possession of power in the courts to take evidence before issue joined, except for the specific causes enumerated in the statutes; but on the contrary both rules 67 and 68, which regulate the taking of testimony, contain the express limitation "after the cause is at issue." Very respectable and well-reasoned authority sustains that view of their meaning.

Stevens *vs.* M., K. & T. R. R. Co., 104 Fed. Rep., 934.

The paragraphs of the respective rules which contain the phrase above quoted refer to the taking of testimony by deposition. Much less does the language used in the last paragraph of rule 67, which provides for taking testimony in open court, admit of such procedure. That paragraph reads:

"Upon due notice given, as prescribed by previous order, the court may at its discretion *permit* the whole or any specific part of the evidence to be adduced orally in open court, on final hearing."

If words have any distinctive meaning, the above would seem to negative any right of dictation or pressure on the part of the court and to be limited to such evidence as a

party might be *desirous* of so adducing, as well as to a *time* when the cause was according to other rules *ready* for the final hearing.

A case where the procedure of the trial court had been quite similar to, though less arbitrary than, that in the case at bar was heard on appeal by the Court of Appeals of the Fourth Circuit. In that case a single bill of complaint had been filed on December 26, 1905, and answered on the same day. A receivership was prayed for, but complainant seemed in no hurry to make the application. On February 24, 1906, defendants asked for and obtained an order that a hearing on the application for a receiver should be held on March 1 following. Nothing seems to have been done on that day, however, and on March 5 complainant filed his general replication to the answer. On March 12 another order was entered at the request of defendant, setting the receivership hearing for March 22, and on March 17, another order by request of the same parties that the final hearing be also held on March 22 upon oral testimony. When that day arrived complainant objected to proceeding and filed his affidavit of reasons. His objection being overruled, he "declined to offer any testimony;" whereupon his bill of complaint was dismissed. Upon the question of procedure under rule 67 that court said:

"There is, therefore, no statute which gave the trial court authority to require the complainant to adduce his evidence orally. The amendment to equity rule 67 provides that: (quoting the paragraph above quoted.)

"This language does not seem to us to authorize the court to require an unwilling party to thus adduce his evidence on final hearing. This rule gives the court a discretionary power to allow a party, or both parties, desiring to do so, to thus adduce evidence; but we find nothing to sustain the contention that this rule authorizes the court to compel an unwilling party to forego his right to use the methods authorized by equity rule 67 as it stood previous to this amendment. The language 'may permit' cannot

properly be held to mean 'may require' or 'may compel.'"

Hyams vs. Federal C. & C. Co., 82 C. C. A., 324.

After concluding that the point thus discussed compels a reversal of the decree, the court suggests that forcing complainant to a final hearing before the expiration of the three months allowed by rule 69 for the taking of evidence "presents an inviting subject for discussion," but as its decision was not necessary it "refrains from expressing an opinion upon it." The right of the Central in that respect will be the subject of discussion under the next head of this brief.

(5) The Central was entitled to three months after issue joined for the taking of its evidence.

Such is the express provision of rule 69 "and no more" unless it shall be enlarged. So far as our investigation has extended this court has never been called upon directly to decide whether a trial court has any discretion as to the minimum limit in view of that positive provision, but there seems an implication in its language used more directly with reference to the discretion given in the power to enlarge, when it said:

"The rule referred to provides that 'three months, and no more, shall be allowed for the taking of testimony after the cause is at issue, unless the court or a judge thereof shall, upon special cause shown by either party, enlarge the time.' The three months are allowed for the taking of testimony by both parties. The limitation applies as much to defendants as to complainants. It is for the court or judge to decide whether further time shall be given or refused, and ordinarily the determination of the question would not be deemed a fit subject for review by this tribunal. Cases may occur, however, of so flagrant a character that it would be our duty to correct the error."

Ingle vs. Jones, 9 Wall., 486.

But the question has been directly decided by at least one of the circuit courts of appeals. The case involved the ownership of the proceeds of a life insurance policy, and the insurance company filed its bill of interpleader against the contesting claimants. Both defendants answered the bill, one on March 22 and the other on April 14 following. The general replication to both answers was filed on April 27. On May 5 one defendant filed a "replication" to the answer of the other denying its allegations. On June 4 counsel for one (Frink) notified counsel of the other (Jewell) that the cause would be called for final hearing on June 11th, but it was not actually taken up until June 29th. A decree was then entered in favor of Frink which recited that counsel for Frink appeared, but counsel for Jewell did not appear; but the latter appealed, alleging the violation of the provisions of Rule 69. The Court of Appeals said:

"It is apparent that at the time of this alleged final hearing the case, while ready for a decree between the complainant and the two defendants, was not ripe for final hearing and decree between the contesting defendants, unless, indeed, the defendants Frink had withdrawn their replication to Mrs. Jewell's answer. Mrs. Jewell's answer sets up facts which she was entitled to prove and have the benefit of. When it was put at issue by the complainant April 27, 1909, and the contesting defendants Frink on May 5, 1909, Mrs. Jewell had three months thereafter in which to take evidence to prove the facts alleged in her answer. Equity Rule 69. This time does not appear to have been waived."

Jewell vs. Ins. Co., 99 C. C. A., 372.

And the decree was reversed upon that ground, with directions to the court below to allow parties properly to make up the issues.

We think we have proven by the foregoing reasoning and citation that equity courts are not a law unto themselves, but are subject to the equity rules, which parties are entitled to depend upon and assert as the measure of their rights and the substantial violation of which must lead to reversal of

any decree so obtained; and that substantial violations of those rules injurious to the Central occurred in the various steps of which complaint has been made.

But should the court determine that the court below had a judicial discretion to vary its procedure from the letter of the rules in question, we submit that such judicial discretion was abused to the extent of unfairness to the interests of the Central and shall try briefly to demonstrate that contention.

The court below was apparently oblivious or unmindful of all claims made against Valdés in the amended bill of the Central except that regarding the character of the loan transaction between them, as its record of July 27, 1909, states, among other things, that in the opinion of the court "the opposite pleadings of each of the parties in said causes reduces the issues almost entirely to questions of law," whereas the amended bill of the Central shows that its averments regarding Valdés' failure to provide for the payment of *anything* by himself as president and manager of the Central to himself as its creditor (or whether as conditional vendor, as he claimed to be, is immaterial), whereby he was enabled to claim a forfeiture of the contract regarding his mismanagement of the property, regarding his ruining the credit by publicly claiming to be the owner of its property, regarding his purchase of machinery in his own name and in the capacity of owner, yet charging its price against the Central upon its books, regarding the usurious character of his loan contract, as well as other allegations (pp. 35-8), were equally important—and all these things were denied by Valdés and naturally, without the Central having any opportunity to present its evidence, were found by the court against it and in his favor.

The court below further based its action upon "the opinion of the court that enough proof is available here in Porto Rico" (p. 86). We hardly think a court has the right in the first instance to substitute its opinion for that of counsel representing a party as to the *quantum* of proof necessary or advisable to be offered, although it doubtless has a discre-

tion to limit the needless reiteration of cumulative evidence; but the affidavit of the character of the evidence desired to be taken on behalf of the Central outside of Porto Rico (pp. 83-4) sufficiently shows that much of it was such as necessarily rested exclusively within the knowledge of Valdés and the witnesses respectively named. That the desired evidence upon the question of usury, for instance, was necessary is shown by the result that the court did not even pass upon the question in its decree except inferentially by allowing all interest claimed.

The questions above considered cover the first seven errors assigned by the Central, and we submit that for those errors alone the decree should be reversed and the Central allowed proper opportunity to prove its allegations and obtain whatever relief the proof it can offer will warrant.

II.

Decree Should Not Have Declared the Existence of an Equitable Mortgage in Favor of Valdés.

This question is raised by the eighth assignment of error. The course of reasoning by which the court below arrived at the conclusion that an equitable mortgage existed is indicated by the following extracts from its opinion and finding of facts upon which the decree was drawn (p. 109) :

"The effect on the part of Mr. Valdés all through the litigation has been to show—and he has made strenuous efforts in this behalf—that he is the absolute owner of all the new machinery put in this plant and in addition the owner of all the lease and machinery rights of the Central Altamaria in the sugar plant and land in question, and that he is entitled as against that corporation and all its stockholders and creditors to immediately take possession thereof. * * *

"The record contains much evidence tending to show that the main object of the officers of the Central Altamaria and Valdés was that the latter should have security for his advance of money. Neither Mr. Pettingill nor Mr. Cornwell denied that, but on the

contrary during the giving of their evidence several times affirmed it. * * *

"We are unhesitatingly of the opinion that the entire matter between the Central Altagracia and Mr. Valdés, no matter what they may call it in the instruments executed between them, was and is as contended by the Central, a loan of money for which security was intended to be given. As between the parties, of course, the instruments they made would ordinarily be binding, but in a suit in equity like this, where its designation as an outright sale is attacked, the court will look behind the face of the instruments to ascertain what the transaction really is. * * * It is therefore our opinion that the transaction as between those two parties is an equitable mortgage or lien, and that because of the breach of the conditions of it Valdés is entitled to have it foreclosed."

We have no disposition to controvert the above findings of fact. It is true, as found, that the Altagracia contracted with Valdés for a loan of money; it is also true that the Central was disposed to give him security in such form as he might desire. But is that enough, when the lender denies that a contract of that character was intended? As we understand the decisions where equitable mortgages have been declared to result from contracts between parties, the very foundation of such declaration has been the claim of its existence *by the lender* and the finding of an agreement of *both parties* to that effect. We know of no case where such a declaration has been made against the strenuous *objection* of *both parties*. This court, in *Ketehum vs. St. Louis*, 101 U. S., 306, quoted with approval the language of Mr. Jones in his work on Mortgages as follows:

"In addition to these formal instruments which are properly entitled to the designation of mortgages, deeds and contracts, which are wanting in one or both of these characteristics of a common-law mortgage, are often used by parties for the purpose of pledging real property, or some interest in it, as security for a debt or obligation, and *with the intention* that they shall have effect as mortgages. Equity

comes to the aid of the parties in such cases, and gives effect to their intentions. Mortgages of this kind are, therefore, called equitable mortgages."

In the later case of *Walker vs. Brown* this court quoted from Mr. Pomeroy's work on Equity Jurisprudence his statement of "the legal principles by which the question of equitable lien is to be determined," which is as follows:

"The doctrine may be stated in its most general form that every express executory agreement in writing, whereby the contracting party sufficiently indicates an intention to make some particular property * * * a security for a debt or other obligation, or whereby the party promises to convey or assign or transfer the property as security, creates an equitable lien upon the property so indicated," etc.

And the court itself said upon the same subject:

"It is clear that if the express intention of the parties was to create an equitable lien upon the bonds or the value thereof, or if such intention arises by a necessary implication from the terms of the agreement construed with reference to the situation of the parties at the time of the contract, and by the attendant circumstances, such equitable lien will be enforced by a court of equity," etc.

Walker vs. Brown, 165 U. S., 654.

The creation of an equitable lien, then, seems to result from an express agreement of the parties or from a finding by the court that the party *claiming such lien* has proven that both he and the other party intended to create it; but here *no one was making such a claim*. The Central was claiming that Valdés, having attempted to acquire an absolute title in a way equity would not countenance and rejecting the idea of a conveyance for security, must be regarded as a general creditor; while Valdés was still urging the existence of his absolute title of ownership. Hence the foundation upon which equitable liens rest did not exist.

But whether this contention be correct or not, the same conclusion becomes unavoidable when the case is looked at

from another angle. It is of course elementary that decrees must bear a logical relation to the allegations and proofs, but that principle has been so happily expressed by this court, speaking by Mr. Justice Swayne, that we cannot refrain from quoting:

"It is hardly necessary to repeat the axioms in the equity law of procedure that the allegations and proofs must agree, that the court can consider only what is put in issue by the pleadings, that averments without proofs and proofs without averments are alike unavailing, and that the decree must conform to the scope and object of the prayer, and cannot go beyond them. Certainly without the aid of a cross-bill the court was not authorized to decree against the complainants the opposite of the relief which they sought by their bills."

Washington Railroad vs. Bradleys, 10 Wall., 299.

That case also holds that a cross-bill upon which there has been no service was "not before the court," but, as we have already argued that feature of the situation, we give Valdés the benefit for the purposes of the present argument of all the pleadings which the court below considered as before it.

Looking first at the amended bill of the Central (p. 33) we find that it alleged that the agreement between it and Valdés was not only for a loan of \$65,000 but for such further advances as might be necessary to finance the Central and arrange its debts, which was to be regarded as a "refaccion debt," that the contract was usurious, that Valdés was the first to violate it, that he never turned over to the Central even the \$30,000 mentioned in the contracts, that as president he had purchased some of its indebtedness at a discount of which he refused to give the Central the benefit, and that it was he himself as the party in full control of the corporation who had failed to provide even the interest upon his claim as a creditor which would have extended the payment of the principal for another year. The prayer was (p. 39) that the transaction between them should be decreed

"to have constituted a loan of money and not a sale of property," that the loan be declared usurious, that Valdés be enjoined from prosecuting his suit at law for the recovery of possession, that the extent of the injury done the Central by his wrongful acts under cover of the office of president be assessed and be set off against whatever might be found equitably due from the Central to Valdés, that a receiver be appointed "to carry on its said business for the benefit of its creditors until its debts can be discharged or properly funded so that both creditors and stockholders may be secured or paid," etc.

The original bill of Valdés, as before pointed out, aimed solely at the appointment of a receiver to care for and operate the business pending the trial of his suit at law (p. 1). His answer to the amended bill of the Central (p. 70) consisted in denials and explanations of the charges made by that bill, concluding with a denial that the transactions therein referred to constituted a loan and asserting that "the transaction was in fact an absolute sale of the properties to the defendant by the complainant and then a conditional sale from the defendant to the complainant," and further denying "that he made any loan to the complainant." His cross bill was a further reiteration of his contention regarding the written contracts and, after reciting the contention of the Central that the agreement was for a loan, makes this significant admission (p. 81):

"And the defendant (meaning Valdés) further alleges that to hold that such contracts are mere loans of money would deprive the said defendant of the property which he legally acquired under and by virtue of the express and unqualified terms of the said contracts, and *would convert the said defendant into a general creditor of an insolvent corporation.*"

The prayer was for damages, possession of the property and vacation of the attachment of Nevers.

We thus see that the positions of the two parties were sharply defined. The Central claimed that Valdés was its creditor, but without security and for a smaller amount than

he as president had caused the books to show. Valdés claimed that the relation of debtor and creditor did not exist, but that he had become the purchaser of the property. By all rules of decision we submit that the court was confined to the determination of these contentions—was not empowered to decree what neither party had prayed or contended for.

We find support for this position in a decision of this court which seems to us identical in principle, though presented in a different way. A New Jersey insurance company became insolvent and upon a bill filed in a chancery court of that State a receiver was appointed to liquidate its affairs as provided by statute. Subsequently the same person was appointed ancillary receiver in New York upon a bill filed in a court of that State. In due course the assets collected in New York were ordered turned over to the receiver acting in New Jersey and the ancillary receiver discharged by the New York court from further liability. Thereafter a money judgment was rendered by the New York court in favor of one of the complainants in the ancillary suit who was a creditor of the insurance company against the ancillary receiver *as receiver* for a large amount of money, and that judgment was presented to the New Jersey court for payment out of the assets in the hands of its receiver. Such payment was refused for the reasons, among others, that it "was entered in the absence of the defendant and was not responsive to the issues presented by the pleadings, and therefore might rightfully be ignored by every other tribunal." This court upheld the New Jersey court upon the ground that the "full faith and credit" clause of the Constitution did not protect judgments not properly responsive to the issues, and in its discussion of that question said:

"It (that clause) does not demand that a judgment rendered in a court of one State, without the jurisdiction of the person, shall be recognized by the courts of another State as valid, or that a judgment rendered by a court which has jurisdiction of the person, but which is in no way responsive to the issues tendered by the pleadings and is rendered in the actual absence of the defendant, must be recognized as valid in

the courts of any other State. The requirements of that section are fulfilled when a judgment rendered in a court of one State, which has jurisdiction of the subject-matter and of the person, and which is substantially responsive to the issues presented by the pleadings, or is rendered under such circumstances that it is apparent that the defeated party was in fact heard on the matter determined, is recognized and enforced in the courts of another State. * * *

"The invalidity of the judgment depends upon the fact that it is in no manner responsive to the issues tendered by the pleadings. This idea underlies all litigation. Its emphatic language is, that a judgment, to be conclusive upon the parties to the litigation, must be responsive to the matters controverted. * * *

"Whatever may be the rule where substantial amendments to the complaint are permitted and made, and the defendant responds thereto, or where it appears that he takes actual part in the litigation of the matters determined, the rule is universal that where he appears and responds only to the complaint as filed, and no amendment is made thereto, the judgment is conclusive only so far as it determines matters which by the pleadings are put in issue."

Reynolds vs. Stockton, 140 U. S., 254.

Various authorities are reviewed in this exhaustive opinion and no further citation is necessary, but we append a few cases to show how widely and uniformly the principle has been applied:

- Providenee R. Co. vs. Goodyear, 9 Wall., 788.
- Seamster *vs.* Blackstock, 83 Va., 232.
- Wayne Pike Co. *vs.* Hammons, 129 Ind., 368.
- Beach *vs.* Atkinson, 87 Ga., 288.
- Bunch *vs.* Spotts, 57 Ark., 257.
- Gille *vs.* Emmons, 58 Kan., 118.
- Hendrix *vs.* Perkins, 52 C. C. A., 435.

In the case last cited it was even held that allegations of fraud in obtaining a decree, being unproven, did not warrant relief on the ground of mistake, which was amply

proven—and this court refused to grant a certiorari (187 U. S., 643).

It is therefore submitted that the decree of the court below, so far as it adjudicated the existence of an equitable mortgage in favor of Valdés, was not responsive to the pleadings or claims made by him and hence was beyond the authority of the court. If such a decree is not valid at all so as to be entitled to faith and credit when presented in a collateral manner, certainly much more must it be erroneous and subject to reversal upon direct challenge by appeal.

III.

Lien of Equitable Mortgage Confined to Property Described in Contracts Creating It.

Even if the court should hold that the court below had power to infer the existence of an equitable mortgage or lien and to enforce it by its decree, that decree is still erroneous in that it subjected to foreclosure and sale to satisfy that lien property not included in the instruments which were held to create it.

Referring to the contracts in question, which were attached (in translation) to the Central's answer to the Valdés bill (pp. 46, 58), we find that the description of property affected by the first is

"the contract of lease and other rights which the company acquired from Salvador and Gerardo Castelló * * * and also such rights as belong to this company in and to the machinery and appurtenances on the premises of the said Central Altamaria at the time of the transfer of the said contract of lease to the company, as well as such rights as belong to this company in and to the machinery and appurtenances introduced by it thereafter on the said premises;"

and that by the second Valdés conditionally sells, etc., "the contract of lease and all other rights which he has in and to the Central Altamaria * * * and which he acquired

from the said company under instruments executed in this city yesterday," etc.

It will be noticed that, aside from the leasehold, all that is included is "the machinery and appurtenances *on the premises*" covered by the lease.

Turning to the decree (p. 118) we find that the court

"ordered, adjudged and decreed that the mortgage lien of the said Ramón Valdés under and by virtue of the said contract of November 2, 1907, be and it hereby is established and declared on each and all of the properties, leases, rights and contracts *hereinbefore described*," etc.

Then, turning to find what has been "hereinbefore described," we find (p. 115) the description divided into three paragraphs, of which the first describes the leasehold, the second describes "all the machinery, apparatus, and utensils * * * installed in the Central Altagracia factory * * * forming the manufacturing plant of said company," while the third describes in some detail the personal property and choses in action of the Central and, in order to let nothing escape, closes with "and all other personal or real property belonging to" it—and that was what was sold (p. 135) and its proceeds dedicated to the payment of the "equitable mortgage."

The court below seemed to see no distinction between suits of the nature of these at bar, where the receivership is only temporary and interlocutory, and those brought under the statutory provisions of States like New Jersey for the dissolution of the corporate existence, where the receiver takes definitely the place of the corporation for that purpose. Yet suits of the latter class can be maintained only at the domicile or habitat of the corporation.

Reynolds *vs.* Stockton, *supra*.

Dickinson *vs.* Sanders, 63 C. C. A., 666.

It needs no argument to support the proposition that the equitable mortgage declared to result from these instruments

could extend to no property which would not have been covered had they been a legal mortgage in form, and that a legal mortgage would not have covered the property included in the third descriptive paragraph.

Woodworth *vs.* Blair, 112 U. S., 8.

Maxwell *vs.* Wilmington Co., 77 Fed. Rep., 938.

Mallory *vs.* Glass Co., 131 Fed. Rep., 111.

As the master appointed to sell the property described in the decree sold it "as an entirety and as a going concern" (p. 135), it is impossible to say what part of the price was bid for that portion described in the contracts and what for that not so described.

We therefore submit that there was also reversible error in that provision of the decree here complained of which is assignment numbered IX.

IV.

Sale of the Central's Property Not Authorized.

Again applying the principles set forth in *Reynolds vs. Stockton*, quoted in the preceding argument, we say that the court below had no authority to enter a decree for a sale of any of the Central's property, because the purpose of the bills of complaint and other pleadings of the respective parties and the prayers contained in their bills and cross-bills did not look in that direction. We have already, under the preceding head, made a summary of what was alleged and prayed by Valdés and the Central and it is unnecessary to repeat it here. Even Nevers asked no more than to be let alone, that is, to be allowed to proceed at law under his execution (pp. 65, 69). So there was no party before the court who was asking it to order a sale in that consolidated suit; hence we think the authorities last cited are equally applicable here, and are conclusive against the propriety and legality of the action of the court in this respect. Moreover, in the former days when rules of pleading were perhaps more technically

followed, this court held that upon a bill filed to foreclose a legal mortgage, it being proven that the mortgage was defective in execution and could create only an equitable lien, relief could not be granted by amendment in that suit, but it must be dismissed and complainant allowed to begin anew in the proper way.

Koehler vs. Hubby, 2 Black, 715.

Yet if this court find any way to sustain the court below in forcing the security of an equitable mortgage upon the unwilling Valdés, still the sale thereunder should surely have been confined to the property subject to that lien, which was that property described in the agreements held to constitute the lien, and it was error to sell *all* the assets of the Central as was done. (See authorities last cited under previous head.) This seems clear, as the establishment of the equitable mortgage or lien was the only possible foundation for decreeing a sale of any part of the Central's property.

We submit, therefore, that there was error in both respects as assigned in grounds X and XI.

V.

Decree Marshalling and Distributing Total Assets not Warranted.

As hereinbefore indicated, the decree seems to us in form one of general sale of assets and distribution of proceeds among creditors. In the statement of the case we called attention to the method by which the list of general creditors and the amounts of their respective claims were ascertained. No notice was given such creditors to present and prove their claims, but the court acted upon the *ex parte* investigation and report of its receiver and an auditor who had made an audit of the Central's books of account. This was sufficiently informal, but probably not a matter in itself of which it could complain.

But the materiality of this procedure is the bearing it has upon, and the indication it gives of, the breadth and char-

acter of the decree. After embodying in the decree itself this list of general creditors, it provides for their payment out of the proceeds of the sale, if sufficient be realized therefrom after satisfying those debts declared to have a preference--a conclusive indication that the court assumed authority to dispose of the total assets of the Central, leaving it only its corporate franchise to exist.

The weight of authority seems to be that only courts in the State where the corporation was created have power to entertain a suit warranting such decree:

R. M. Silver Mines *vs.* Brown, 7 C. C. A., 415.

Dickinson *vs.* Sanders, 63 C. C. A., 666.

Arentz *vs.* Blackwell Tob. Co., 101 Fed. Rep., 338.

Parks *vs.* Bankers' Corp., 140 Fed. Rep., 160.

Burgoine *vs.* Railroad Co., 15 N. Y. Supp., 537.

The same conclusion is indicated by the reasoning of this court in *Reynolds vs. Stockton*, hereinbefore cited, but the question was not directly under discussion.

It may be worth while to advert to the fact that the decree contains no adjudication of the insolvency of the Central, nor do the findings indicate such insolvency at any time prior to the impounding of all its assets and the subjection of them to a forced judicial sale; and that no creditor other than Nevers was asking for the payment of his debt. In that condition of the record had the court below any authority to order general creditors paid out of the fund? This court has said:

"No one except an owner is entitled to payment out of the registry, unless he has a lien upon the fund therein. The court can marshal the fund only between lien-holders and owners."

The Edith, 94 U. S., 518, 523.

We think the court mistook the kind of decree proper where the assets under its control were those of a foreign corporation; that being the error alleged in the XIIth assignment.

VI.

Adjudication That Central Had Defaulted in Payment Not Warranted.

The decree finds (p. 118) "that the Central Altamira, Incorporated, has defaulted in the payment to Ramon Valdés of the two instalments of the principal and interest due in accordance with the terms of the contracts * * * which have been held to constitute an equitable mortgage," etc.; and in the findings of fact made by the court below we find this statement (p. 104):

"First what purports to be an absolute sale of the entire rights that the Central Altamira had in and to the sugar mill and plant was executed to Valdés, and he in turn immediately made a sale back to the corporation of the same property. Then the corporation elected Valdés its president and manager, etc. He had been vice-president and director previous to that time since first lending it money and he immediately *took charge* of the plant for the ensuing grinding season, *with a view to paying himself back* in instalments as was stipulated in the contracts between the parties," etc.

That was in November, 1907. The first instalment was to fall due in April, 1908. The second did not become due until April, 1909, which was long after Valdés himself had filed his suit and obtained the appointment of a receiver, thus incapacitating the Central from paying. So, while the second instalment was overdue as to date, the right of Valdés to bring suit for default must depend upon the legal responsibility of the Central *to him* for the non-payment of the *first* instalment when due.

Not only does the above finding show that he had been president and manager of the Central from the time it contracted with him the obligation to make this payment, but his answer to the bill of the Central also admits (p. 72)

"that he acted as the treasurer of the complainant corporation after his election as president of the company, and that he collected and disbursed the funds of the said company." One of the provisions of the copract for payment of the instalments was (p. 60) that if any one was not paid when due it should be extended for one year upon payment of the interest to that time on the total amount. Hence a payment to himself of \$5,500 on the 1st of April, 1908, would have extended the whole debt and avoided a default. Yet Valdés, who was president, manager and treasurer and by his own admission had "assumed the active and entire management and control of complainant's business" (p. 73), and who claimed to have advanced for other purposes of his own choosing \$14,000 more than his contract called for (p. 105) felt no obligation so to "manage" as to provide even the small sum of \$6,500 to save from himself the forfeiture of the plant which the corporation had placed in his charge, but was content to state as his justification that "he could not pay to himself the interest due to him under the contract of conditional sale between him and the complainant for the reason that there were no funds out of which to pay the said interest" (p. 77)—and instead of making any attempt to raise such funds proceeded quite promptly to bring suit for his pound of flesh.

Although the court below denied to the Central any reasonable opportunity to prove the extent to which the alleged maladministration and misfeasance in office of Valdés had contributed to the helpless financial condition of the corporation admittedly under his "entire management and control," we believe enough appears from the admissions of his answers and the findings of the court to entitle this court to adjudge that equity will not countenance such a course of conduct as Valdés pursued.

While we recognize the rule that officers of a corporation may contract with it in a fair and equitable manner and, having become its creditors, may use the ordinary means for securing or collecting their debts, we do not believe that rule applies to an officer who has full control of its finances as

well as of its business management. By assuming and continuing such control we believe he incurs a greater obligation to protect the corporation from himself than from any other creditor because by that control he has deprived other stockholders and officers of the opportunity to protect it, and that this record shows Valdés failed in that obligation. The very finding of the court that the contracts, drawn in the form Valdés dictated and insistently claimed by him to signify a purchase of the property and its resale, were merely the evidence of a loan, whether secured or unsecured, coupled with his admission of receiving gratis 150 shares of stock about the same time, indicated and should have been held sufficient to show a violation on his part of the good faith which his relation to the Central required and an intention to deprive it by unfair means of the ability to redeem its property. In other words, if he elected to take into his own hands and control all the means which the corporation had for complying with its obligations to him, it did not lie in his mouth to claim that it had defaulted by not complying.

Very few cases can be found where the corporation itself is the party complaining, since its other officers are usually only creatures of the wrong-doer; hence the litigation is usually begun by stockholders or creditors. But, except as to questions involving priority of rights between creditors, the principles applicable would appear to be identical. At least, any right which a stockholder would have the corporation itself must have, if it choose to claim it.

The general principle as stated by this court in *Twin Lick Oil Co. vs. Marbury*, 91 U. S., 587, has been often quoted:

"That a director of a joint-stock corporation occupies one of those fiduciary relations where his dealings with the subject-matter of his trust or agency, and with the beneficiary or party whose interest is confided to his care, is viewed with jealousy by the courts, and may be set aside on slight grounds, is a doctrine founded on the soundest morality, and which has received the clearest recognition in this court and in others."

Quoting and applying that principle in *Richardson's vs. Green*, 133 U. S., 30, it was stated in another form as follows:

"Undoubtedly his relation as a director and officer, or as a stockholder of the company, does not preclude him from entering into contracts with it, making loans to it, and taking its bonds as collateral security; but courts of equity regard such personal transactions of a party in either of these positions not, perhaps, with distrust, but with a large measure of watchful care; and unless satisfied by the proof that the transaction was entered into in *good faith, with a view to the benefit* of the company as well as of its creditors, and *not solely* with a view to *his own benefit*, they refuse to lend their aid to its enforcement."

See, also,

Drury vs. Railroad Co., 2 Wall., 299.

Casey vs. Brown, 92 U. S., 171.

McCourt vs. Singers-Biggar, 76 C. C. A., 73.

Hentig vs. Sweet, 33 Kan., 244.

VII.

Decree Should Have Been Modified on Motion.

The decree was entered on the 14th day of October, 1909—a day in the October term of that court (Act of April 12, 1900; 31 Stat. L., 84), no other term intervening until January,—and on November 5, following, counsel for the Central filed its motion to modify said decree (p. 127). With that motion was presented an affidavit showing that the officers of the Central had recently been in New York city negotiating with the representative of the owners of the fee in the property upon which the Central had its leasehold to arrange terms for its purchase, that during said negotiations Valdés also became a bidder, that the latter had succeeded in closing a contract for its purchase and had stipulated to have the title taken in the name of his son "in an effort to avoid the legal consequences in the nature of a trust which

it was recognized would result should said title be taken in the name of said defendant, Ramon Valdés," because of his relation to the Central and to said suit. Therefore the prayer was that the decree be modified "in such manner as to hold that said Valdés in acquiring the fee in the manner aforesaid, in law, in equity and in good conscience acquired same for Central Altagracia Incorporated," etc.

In connection herewith the court should bear in mind what was said by the court below in its findings upon that matter (p. 106) :

"At one time the court made an effort and expressed its willingness to permit the issuance of receiver's certificates therefor if the interest of the Sanchez de Larragoiti heirs (the original lessor having died) could be purchased for the Central at a reasonable price, so that there might be a title in fee in the Central Altagracia Inc. and that the court might thus avoid the continuous applications and efforts of the representatives of that estate to oust everybody connected with this litigation from the premises. Unfortunately all this effort of the court, in which most of the counsel joined, proved futile and nothing could be done."

It is thus seen that Valdés had full knowledge of the importance of said fee interest to the Central and of the fact that negotiations had been and were pending in the hope of its acquisition, yet after he had obtained the final decree he proceeds to acquire it in his own interest, not only so as to deprive the Central of all chance to acquire it, but so as to be the only person who would be in position to bid to advantage at the then approaching judicial sale under said decree.

We submit that, under proper provisions for his protection as to the return of his purchase price, he should have been declared to hold in trust and the fee interest thus acquired should have been added to the property to be sold—thus enhancing its sale value many times the amount of said purchase price.

McCourt *vs.* Singers-Biggar, *supra*.

De Bardeleben *vs.* Bessemer, 140 Ala., 621.

For the various errors above suggested and discussed, we confidently submit that the decree of the court below must be reversed and the cause sent back for a proper trial in accordance with the law as this court may lay it down.

We now proceed to touch briefly upon a few points urged in the brief in support of the cross-appeal of Valdés in No. 193).

Contentions of Valdés as Appellant.

The only contentions made by the brief on behalf of Valdés as appellant in No. 193 in which the Central is interested are those stated under points I and III, as point II is entirely subsidiary to point I and falls if the latter falls.

I.

The first and insurmountable difficulty in sustaining the contention made by Valdés under this point is that the court below found the contrary to be the fact, a finding which this court will not review. (*Gazrot vs. Rios*, 209 U. S., 283.)

No fact in the whole record appears more emphatically than this, where it is said on page 109:

"We are unhesitatingly of the opinion that the entire matter between the Central Altagracia and Mr. Valdés, no matter what they may call it in the instruments executed between them, was and is as contended by the Central a loan of money for which security was intended to be given."

And that finding was incorporated into the decree by the adjudication of the existence of a debt and a lien to secure it. The finding of the character of the contract as one of loan was the finding of a fact, that of the lien supposed to result was a conclusion of law as to which we have argued that the court made error. But the finding of fact remains.

Counsel for Valdés have presented no argument or citations in their brief upon this point different in effect from those presented, considered and overruled by this court in deciding the practically identical question in *Cabrera vs. American Colonial Bank*, 214 U. S., 224. Indeed the citations are substantially identical also. In that case, after stating the substance of certain sections from the Puerto Rican Civil Code—the same now cited by counsel for Valdés—this court explained their effect by saying (p. 230):

"But these are also the principles of the common law, and absolutely necessary if the written instrument is to be given a distinctive sanction of the agreement of the parties. But there are well-recognized exceptions. The face of an instrument is not always conclusive of its purpose. In equity, extrinsic evidence is admitted to show that a conveyance absolute on its face was intended as security. The rule regards the circumstance of the parties and executes their real intention, and prevents either of the parties to the instrument committing a fraud on the other by claiming it as an absolute conveyance, notwithstanding it was given and accepted as security. In other words the real transaction is permitted to be proved."

The conclusion thus stated is entirely consistent with the law as quoted in the brief of counsel for Valdés from the eminent commentator Manresa and the Supreme Court of Spain. Those quotations merely go to the effect that contracts of conditional sale reserving title in the seller are valid and binding, that is, using the words of the Bianchart case, not "contrary to law or against morals or public policy" (Brief, p. 13). Our own courts have often decided the same thing, and we have no disposition to question its correctness. But back of the application of that principle may lie the question, Is the contract under consideration one of conditional sale? To determine *that question* the circumstances and the intention of the parties are subject to inquiry, and in the present case it was determined therefrom that "the real transaction" was not a conditional sale. Hence the law cited has no application.

Moreover, there are numerous decisions of the Supreme Court of Spain directly in line with the decision of this court in the *Cabrera case* upon the point above quoted (Jurisprudencia Civil, vol. 78, p. 494; vol. 79, pp. 232 and 568; vol. 86, p. 408; vol. 89, p. 121; vol. 93, p. 311; vol. 101, p. 615).

"Point III."

In answer to the argument made under this point it is sufficient to say that the same argument was made and the same citations proffered in the *Cabrera case, supra*, to which this court there replied (p. 233):

"But we need not distinguish between motive and consideration. The testimony was addressed to the consideration of the bill of sale in its strictest sense. On the face of the instrument the bank engaged to give up its debt for the stock of goods. This, then, constituted the consideration as expressed, but the testimony explaining it showed that it was not the real consideration, that the real consideration was to keep Suarez & Company a going concern, and to give the bank additional security."

That was exactly the situation presented in the case now before the court, and the court below received the evidence which proved, as it found, that the *real consideration* back of the written contracts was a loan of money. And such evidence has always been received in the courts of Spain and Porto Rico as well as in those of our own country. (See Spanish decisions above cited, and *Horton vs. Robert*, 3 Castro's Decisions de P. R., 410, 415; 11 P. R. Rep., 168, 174.)

In conclusion, permit us to advert to the fact that counsel for Valdés are still contending that the absolute title of the property under the contracts vested in him, and reject the benefit of the lien declared in his favor by the court below. Indeed, on page 17 of their brief in No. 193, they admit that such a lien is "unknown to the Porto Rican law" and

join us in the contention (though upon different grounds) that there could be no "reason or warrant" for the action of the court below in creating it. Applying the principle stated in the quotation first above made from the *Cabrera case*, that claiming as an absolute sale an instrument really given as security is "a fraud on the other party," it is difficult to see why equity should aid the offender and enforce a security which he has repudiated.

It would therefore seem that, by common consent as well as by settled equitable principles, the only question open to decision touching the *effect of the contracts* is whether Valdés shall be held to be the *owner* of that property or a *general creditor* of the corporation.

Respectfully submitted,

N. B. K. PETTINGILL,
FREDERICK L. CORNWELL,
Counsel for the Central Altamira, Incorporated.

Supreme Court, U. S.
Washington.

FEB 14 1912

JAMES H. McKEELEY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 193.

RAMON VALDES, APPELLANT,

vs.

CENTRAL ALTAGRACIA, INCORPORATED,
AND NEVERS & CALLAGHAN.

No. 196.

CENTRAL ALTAGRACIA, INCORPORATED,
APPELLANT,

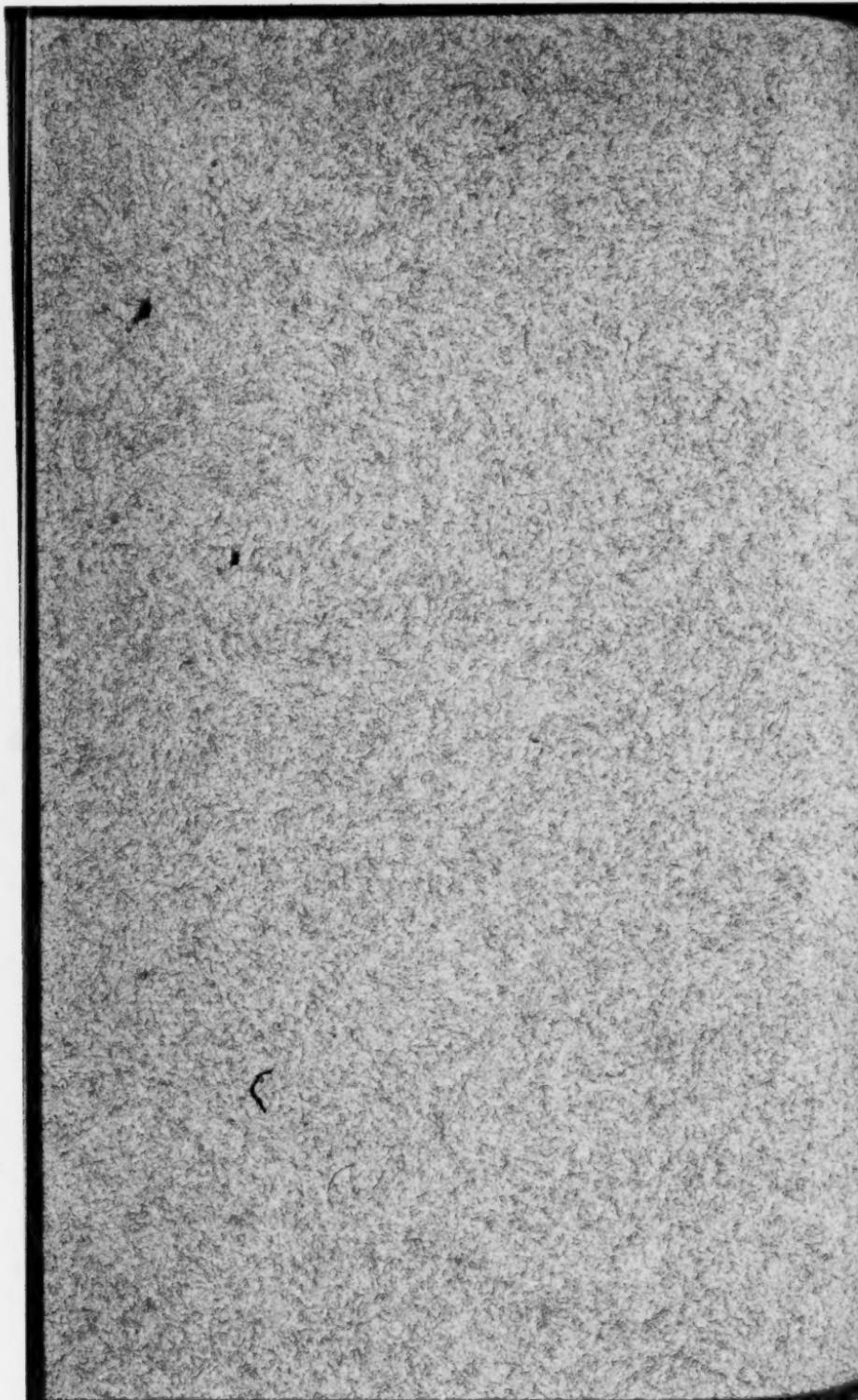
vs.

RAMON VALDES, AND GEORGE C. NEVERS,
GEORGE B. ACKERSON, AND JAMES G.
CALLAGHAN, COPARTNERS, DOING BUSINESS
UNDER THE FIRM NAME OF NEVERS & CALLAGHAN.

APPEALS FROM THE DISTRICT COURT OF THE UNITED
STATES FOR PORTO RICO.

BRIEF FOR APPELLEES, NEVERS & CALLAGHAN.

FRANCIS H. DEXTER,
Of Counsel for Nevers & Callaghan.



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APPEALS FROM THE DISTRICT COURT OF THE UNITED
STATES FOR PORTO RICO.

BRIEF FOR APPELLEES, NEVERS & CALLAGHAN.

Statement of the Cases as They Affect Appellees.

Appellees, Nevers & Callaghan, were brought into the above cases (which were consolidated in the court below) because of prior rights that they

had acquired as a result of a judgment obtained and an execution levied upon the property—the subject-matter of litigation—before the institution of the above-entitled causes.

We adopt the “Statement of Findings of Fact and Law and Opinion of the Court on the Merits” that was made by the court below for the purpose of demonstrating the relations of Nevers & Callaghan to the other parties to this litigation, and to the property—the object thereof (page 103, Transcript of Record in Case 196).

For the purpose of the brief of said appellees we need only call the attention of this court to the following facts which appear in the record and in the said Statement of Findings of Fact.

The contracts between Valdes and the “Central Altagracia” were executed respectively on October 28 and November 2, 1907.

Quoting from the Statement of Findings of Fact of the court below, we submit the following findings, which show the position of Nevers & Callaghan (page 108, Transcript of Record, Case 196):

“It transpires that several months before
“any negotiations of any kind or character
“had taken place between ‘Central Alta-
“‘gracia’ and Valdes, the former had ob-
“tained a loan of some twenty-five thou-
“sand (\$25,000) dollars from the firm of
“Nevers & Callaghan of New York, prom-

“ ising to deliver the sugar of the crop of
“ the mill for the ensuing season to repay
“ the same, but failed to do so and left a
“ large part of said debt due and owing.
“ This firm, according to all we can gather
“ from the record, had no knowledge of the
“ transactions between the Central and
“ Valdes or these so-called sales of the en-
“ tire property of the concern to him when
“ the same are purported to have been
“ made, or at any time previous to the ap-
“ plication for a receiver, *as none of such*
“ *instruments were recorded in any Reg-*
“ *istry of Property.* (Italics are ours.)

“ We might pause here to say that the
“ Registry of Property of the district
“ where this land and plant are situated
“ contains no entry concerning the property
“ in question save that which brings the
“ title into Joaquin Sanchez de Larragoiti,
“ the lessor of Castelló. All the other trans-
“ actions as heretofore mentioned, it seems
“ were not and could not be registered
“ under the law.

“ After Nevers & Callaghan’s account be-
“ came due and on December 12, 1907, they
“ filed a suit (516 Law Docket) in this court
“ on the note that represented it, and there-
“ after on May 16, 1908, recovered judg-
“ ment for nearly sixteen thousand
“ (\$16,000) dollars. Under this judgment,
“ on May 29, 1908, they caused execution to
“ be levied on ‘all the machinery within the
“ factory building of the said Central Al-
“ tagracia, Incorporated.’ ”

The exact amount of the judgment in favor of Nevers & Callaghan was the sum of.....	\$15,878.87
Plus interest: 6 per cent from July 13, 1907, to May 16, 1908, date of judgment.....	756.90
Total.....	16,635.77

(See Final Decree, page 117, Transcript of Record, case 196.)

Quoting again from the Statement of Findings of Fact (page 109, Transcript of Record, Case 196):

“ Nevers & Callaghan simply claim that
“ in and by their said suit and the levy of
“ their said execution they have obtained
“ as against the machinery an absolute lien
“ superior at least to that of Mr. Valdes
“ and that of any other creditor and per-
“ haps even superior to the rights and in-
“ terest of the estate of the original les-
“ sors — Larragoiti. Counsel for Nevers
“ & Callaghan claim that Valdes is nothing
“ but a general creditor; because, as they
“ allege, the ‘Central Altagracia’ could not
“ sell him any right in the plant or land in
“ question and because the alleged transfers
“ were not recorded so as to give notice to
“ existing or future creditors or anybody
“ else, and because a chattel mortgage is un-
“ known to the laws of Porto Rico.”

* * * * *

Page 109, Transcript of Record, Case 196:

“ We are unhesitatingly of the opinion
“ that the entire matter between the ‘Cen-
“ tral Altagracia’ and Mr. Valdes—no
“ matter what they may call it in the in-

“struments executed between them—was
 “and is, as contended by the Central, a loan
 “of money for which security was in-
 “tended to be given. As between the
 “parties, of course, the instrument they
 “made would ordinarily be binding, but in
 “a suit in equity like this, where its desig-
 “nation as an outright sale is attacked, the
 “court will look behind the face of the in-
 “strument to ascertain what the transac-
 “tion really is (see opinion in ‘American
 “Colonial Bank vs. Cabrera *et al.*,’ 3 P. R.
 “Fed., 14, and cases cited). It is therefore
 “our opinion that the transaction as be-
 “tween these two parties is an equitable
 “mortgage or lien, and that because of the
 “breach of the condition of it Valdes is en-
 “titled to have it foreclosed.”

* * * * *

Page 110, Transcript of Record, Case 196:

“The next proposition, that is, as to what
 “the relative situation is between this
 “equitable lien or mortgage of Valdes on
 “the one hand and the execution of Nevers
 “& Callaghan on the other, is not so easy—
 “but, on the whole, under the rule that the
 “law favors the diligent and that the levy-
 “ing of an execution fixes a plaintiff’s right
 “in the absence of superior rights in others,
 “we feel bound to hold and do hold that
 “Nevers & Callaghan’s lien is superior to
 “that of Valdes.

“It is our opinion that any creditor of
 “this corporation who secured a judgment
 “and a levy upon any property rights of
 “the ‘Central Altagracia’ previous to
 “June 2, 1908, when Valdes applied for a

“ receiver to take charge of it, unquestionably both at law and in equity has a superior right to Mr. Valdes—and this because of the peculiar situation of the law in Porto Rico.

“ A chattel mortgage is unknown to the jurisdiction, and no record was made nor could be made, and so far as we know, no creditor knew anything about Mr. Valdes's alleged rights previous to the application for a receiver, when he, for the first time, produced his alleged deed and sued to eject everybody from the property in question (see Suit No. 563, Law Docket, this District). The fact that he, months previous, took possession of the plant and managed it does not change the situation, because he took possession as president of the company and therefore permitted the whole world to believe that it was still the property of the 'Central Altamaria, Inc.'

The court below finally found that the "equitable mortgage and lien" of Valdes should be foreclosed and that out of the proceeds of the sale there should be paid next after outstanding receiver's certificates, taxes, accounts and other debts of the receivership the claim in full of Nevers & Callaghan to the date of the sale, and thirdly, the indebtedness of Valdes (page 112, Transcript of Record, Case 196).

These findings were duly incorporated into the final decree, which was entered thereafter by the court and which, among other things, provided

that the property of the Central Altagracia, Incorporated, was as follows (page 115, Transcript of Record, Case 196):

“ 1. That certain lease of the sugar factory known as ‘Central Altagracia’ situated, lying and being near the city of Mayaguez, Island of Porto Rico, together with certain machinery for the manufacture of sugar and then and at that time being in and forming part of said factory, together also with twenty-two ‘cuerdas’ of land upon which the said factory is built and which pertain and are annexed to and immediately surround the said factory, executed at Paris, France, on or about the eighteenth day of January, 1905, by Joaquin Sanchez Larragoiti, and in favor of Salvador Castello of Mayaguez, Porto Rico, and for a term of twenty (20) years from January 18, 1905.

“ 2. All the machinery, apparatus and utensils used for or in connection with the manufacture of sugar, installed in the ‘Central Altagracia’ factory by the Central Altagracia, Incorporated, after the assignment of the lease by Salvador Castello to the said corporation, forming the manufacturing plant of the said company.

“ 3. All the rights, claims, appurtenances, contracts for the grinding of cane, seales, railroad tracks and switches, tools, implements, household and office supplies, rights of way, easements, mules, horses, tugboats, barges, and all other personal or real property belonging to the ‘Central Altagracia, Incorporated.’ ”

It will be apparent, therefore, to the court that, relying as we do upon the findings of the lower court, the levy of the execution of Nevers & Callaghan upon "all the machinery within the factory building of the said 'Central Altagracia, Incorporated,'" applied to and affected only the machinery, etc., described in the second subdivision above, as quoted from the decree; to wit: "*The machinery, apparatus and utensils installed in the factory by the 'Central Altagracia, Incorporated,' after the alleged or attempted assignment of the Larragoiti lease from Castelló to the company.*

Undersigned counsel have always contended that the attempted assignment of said lease by Castelló was absolutely null and void in view of the express prohibition contained in the lease executed by Sanchez Larragoiti (see second clause of said lease, page 48, Transcript of Record, Case 196).

Nevers & Callaghan have never attempted to assert their judgment or execution against the property of Sanchez Larragoiti, described in said lease. We have always contended that the contracts between the 'Central Altagracia, Incorporated,' and Valdes, executed in New York in October and November respectively, 1907, were absolutely null and void, because neither Castelló nor the Central Altagracia, Incorporated, acquired any right or power to transfer the mill or machinery contained therein belonging to Sanchez Larragoiti.

On the other hand, clause 3 of the Larragoiti lease, to the effect that all machinery introduced by the lessee should, at the end of the term of the lease, become the exclusive property of Sanchez Larragoiti, could not deprive creditors of the lessee or of any person purporting to act under his authority, or, being in apparently lawful possession, from proceeding against such newly installed machinery in satisfaction of their lawful demands, particularly if such newly installed machinery had been purchased out of funds advanced by them. We quote again from the findings of the final decree (page 115, Transcript of Record, Case 196):

“ Nevers & Callaghan acquired a lien
 “ over the said property of ‘Central Alta-
 “ ‘gracia, Incorporated,’ by virtue of the
 “ execution levied upon the said property
 “ the ninth of May, 1908, and that the said
 “ lien is superior to the equitable mortgage
 “ or lien of Ramon Valdes for the reason
 “ that Nevers & Callaghan acquired by their
 “ judgment and levy of execution a prior
 “ right in and to said property so levied
 “ upon, being the machinery in said fac-
 “ tory, etc.”

The total amount allowed by the final decree to Nevers and Callaghan was the

Amount of the judgment and interest thereon to the date thereof, amounting in all to....	\$16,635.77
Plus accrued interest on the principal sum from the date of said judgment to August 16, 1909	1,247.63
Total.....	<hr/> \$17,883.45

The record will disclose that the money furnished by Nevers & Callaghan to the "Central Altagracia, Incorporated," was in the nature of an agricultural loan (refaccion), for which they were entitled to the preference which the Civil Code extended as such.

It is not contended by any claim apparent in the record in this case that Nevers & Callaghan had any knowledge of the agreement between Valdes and "Central Altagracia, Incorporated." Nevers & Callaghan claim that no matter what may be the respective rights between "Central Altagracia, Incorporated," and Valdes they are entitled as against both these parties to the payment of their judgment as decreed by the court below.

We respectfully call the attention of this court to the fact that upon the records of these cases appellant Valdes is the only one who can be permitted to question the findings and decree of the court in favor of Nevers & Callaghan.

It is true that in the fourth and ninth assignments of error of the "Central Altagracia, Incorporated," exception is taken to the action of the court below with reference to the decree in favor of Nevers & Callaghan, but we shall show in the Brief of the Argument, which follows, that appellant "Central Altagracia, Incorporated," is in no position, under the issues made by it in the court below, to press these assignments of error.

We will now consider the assignments of error of both appellants in the following

BRIEF OF THE ARGUMENT.

I.

Appellant the "Central Altagracia, Incorporated," assigns the following error with respect to Nevers & Callaghan (page 122, Transcript of Record, Case 196) :

" IV. The court erred in ordering the
 " 'Central Altagracia, Incorporated,' to
 " proceed to trial of the aforesaid consol-
 " idated causes of action without allowing
 " said 'Central Altagracia, Incorporated,'
 " an opportunity to except to answer of
 " Nevers & Callaghan or plead to said
 " Nevers & Callaghan's cross-bill in accord-
 " ance with the rules of equity.

" IX. That the court erred in entering
 " a final decree here in favor of the said
 " Ramon Valdes and Nevers & Callaghan
 " and against these defendants."

As to the fourth assignment of appellant, "Central Altagracia, Incorporated," this assignment has no merit in so far as concerns appellees, Nevers & Callaghan, for the reason that during the progress of the trial no issue was made by the "Central Altagracia, Incorporated," as against Nevers & Callaghan and the assertion of their judgment as insisted by them.

A reference to the bill of complaint filed by "Central Altagracia, Incorporated," against Valdes and Nevers & Callaghan (pages 6 and 7 of

Transcript of Record, Case 196) will disclose that its whole purport was a complaint of maladministration and misconduct against Valdes. One of these allegations was:

“ Your orator further alleges that on the sixteenth of May, 1908, judgment was rendered in this court by the said defendants Nevers & Callaghan, against your orator for the sum of about seventeen thousand (\$17,000) dollars, upon which execution has been issued and levied upon the said machinery and factory of your orator, yet said defendant Valdes, as president of your orator, has done nothing to avoid said execution and levy” (pages 10 and 11 of Transcript of Record, Case 196).

This is an implied charge that Valdes should have provided funds or means for the payment of our debt.

The object of the bill was only to obtain the appointment of a receiver “to take charge and control of the property all and singular of your orator and to carry on its said business for the benefit of its creditors until its debts can be discharged or properly funded so that both creditors and stockholders may be secured.”

No charge whatever was made against Nevers & Callaghan, nor was any prayer found in said bill, which seeks to question the validity and priority of our claim. The only relief asked against Nevers & Callaghan is that they shall *answer the bill*.

This might be regarded as frivolous since no charge was made against them which put them upon answer.

The bill prayed "that the defendants and all other persons may be enjoined from interfering with the possession or control of said receiver."

Demurrers were filed by Nevers & Callaghan to this complaint (pages 23 and 26, Transcript of Record, Case 196).

It was only because the court overruled these demurrers and ordered the filing of an answer (pages 27 and 28) that Nevers & Callaghan filed their answer to the bill of the "Central Altamaria" (page 64, Transcript of Record, Case 196).

In view of the character of the bill of complaint no answer was necessary, but as the court below ordered the filing of the same there was filed the purely formal answer, which appears in the Record, to which, considering the allegations made in its bill of complaint, no issue could be taken by Central Altamaria, Incorporated.

Therefore, the complaint set up by the "Central Altamaria, Incorporated," in its fourth assignment of error is not well founded.

For the same reason the ninth assignment of error lacks merit.

Under these circumstances and the state of the Record the *Central Altamaria, Incorporated*, cannot complain of the action of the court below with respect to Nevers & Callaghan.

II.

The "Central Altagracia, Incorporated," assigns various errors to the action of the court below in connection with its findings and decree in favor of Nevers & Callaghan.

The basis and purport of these are that by the agreements executed between the Central Altagracia, Incorporated, and Valdes in October and November, respectively, of 1907, Valdes became entitled to all rights of property which the company had in and to the establishment composing the Central.

The findings of fact made by the court below clearly demonstrate that Valdes is in no position to successfully assert such claims as against Nevers & Callaghan, and we contend that the conclusions of law and the decree of the court in favor of Nevers & Callaghan are justified and sustained by the findings of fact.

From these findings of fact it makes no difference what may be the outcome of the issues as between the Central Altagracia, Incorporated, and Valdes in so far as concerns the rights of Nevers & Callaghan to the benefit of their judgment and execution. The findings of fact of the court below are conclusive upon this court and only matters of law can be considered by it on appeal from the district court of the United States for Porto Rico.

Idaho & O. Land Improvement Co. vs. Bradbury, 132 U. S., 509.

Hecht vs. Boughton, 105 U. S., 235.

Garzot et al. vs. Maria Rios de Rubio, 209 U. S., 283.

In our judgment Valdes was but a general creditor.

To summarize our position we claim:

Point I.

The attempted deed of sale executed by the "Central Altagracia" in favor of Valdes in the city of New York on October 28, 1907, is absolutely null and void for the reasons:

(A) As to the lease of the real estate and machinery belonging to Sanchez Larragoiti or his succession the "Central Altagracia, Incorporated," had absolutely no power to execute such a document. The lease executed by Sanchez Larragoiti expressly prohibited any alienation or mortgage of such property.

(B) The new machinery placed in the mill by the "Central Altagracia, Incorporated," became part of the establishment and must be considered as real estate (*bienes inmuebles*) under the law of Porto Rico, but subject, however, to the claims of Nevers & Callaghan, or of any other creditor entitled to a lien or priority thereon by the laws of Porto Rico.

(C) As the deed related to real property it could not affect innocent third parties, because it was not inscribed in the registry of property.

(D) Nevers & Callaghan were entitled to a priority of lien upon the new machinery, because their debt was a preferred claim ("credito refaccionario").

(E) The attempted deed of sale was null and void, because it was not authorized by the stockholders of the company.

Point II.

Valdes did not have even an equitable mortgage on the property in litigation as was found by the court, because the principles of equity jurisprudence cannot be applied in the district court of the United States for Porto Rico in contravention of the law there in force.

Point III.

Even if the agreement between the "Central Altagracia, Incorporated," and Valdes should be held to have created an equitable mortgage in behalf of the latter such equitable mortgage is subject to the rights acquired by Nevers & Callaghan, innocent third parties, who, by their judgment and levy of execution, without knowledge of the claims of Valdes, are entitled to the collection of their debt. This point will be considered on the theory that the rules of equity jurisprudence are applicable in Porto Rico.

As to Point I.

(A) A reference to the lease from Larragoiti to Castelló is sufficient to show that the "Central Altgracia, Incorporated," had no right to nor interest in the property belonging to Larragoiti.

We quote the second, third and eighth clauses of this lease, which is set forth in Exhibit "A" to the answer of the "Central Altgracia, Incorporated," which appears on page 46 of the Transcript of Record, Case 196:

"2. Under no circumstances and in no respect shall the said Don Salvador Castelló contract any obligation whereby the said Don Joaquin Sanchez de Larragoiti shall have the least personal responsibility, nor shall the said Don Salvador Castelló, under no circumstance and in no respect, alienate, mortgage or encumber the Central, and the twenty-two (22) 'cuerdas' (acres) annexed thereto, with any lien that shall affect the said property.

"3. In brief, the right and powers that Don Joaquin Sanchez de Larragoiti grants unto Don Salvador Castelló are to operate and work the said property for his account, and introduce therein such machinery as he may deem convenient; which said machinery, at the end of the years mentioned in Article I hereof shall become the exclusive property of Don Joaquin Sanchez de Larragoiti.

"8. Upon the expiration agreed on under this contract any improvement or ma-

“chinery installed in the said Central shall
“remain for the benefit of Don Joaquin
“Sanchez de Larragoiti; and Don Salvador
“Castelló shall have no right to claim any-
“thing for the improvements made.”

Our position is that the “Central Altagracia” acquired no right to the lease or any of the property composing the Central Altagracia, and therefore had no right or power to execute the agreements of October and November, 1907.

Furthermore, we contend that the foregoing provisions of the lease could be given effect only as to such machinery and improvements as had been paid for and would not be subject to the claim of any creditor who by the law of Porto Rico might be entitled to assert his claim against the same.

In other words, the prohibitions of the lease apply only to voluntary alienations.

(B) According to the law of Porto Rico, the new machinery placed in the establishment, whether by Castelló or by the “Central Altagracia, Incorporated,” became part of the real estate.

Section 335 of the Civil Code of Porto Rico provides

“The following are immovables:
“1. Lands, buildings, roads and structures of every kind adherent to the soil;
“2. Trees, plants and ungathered fruits, while they are not separated from the land or form an integral part of an immovable;

“3. Everything attached to an immovable in a fixed manner in such a way that it cannot be separated from it without breaking the matter or causing injury to the object;

“4. Statues, reliefs, paintings or other objects of use or ornament, placed in buildings or on lands or tenements by the owner thereof in such a manner that they became attached permanently to the property;

“5. Machinery, vessels, instruments or implements intended by the owner of the tenements for the industry or works that they may carry on in any building or upon any land and which tend directly to meet the needs of the said industry or works.”

Even the new machinery placed in the establishment by Castelló or his supposed assignee, the Central Altagracia, Incorporated, became part of the real estate for all purposes except as against Nevers & Callaghan and other creditors entitled to priority and lien. Therefore this new machinery came under the provisions of the Larragoiti lease so far as concerns the prohibition against the voluntary alienation or mortgage thereof.

(C) Considering that the attempted transfer of the lease of the establishment and the twenty-two (22) cuerdas (acres) upon which it was situated (including the new machinery) related to real property (“bienes inmuebles”) the attempted transfer thereof to Valdes could not be made ef-

fective as against innocent third parties without the same being inscribed in the Registry of Property.

Section 613 of the Civil Code of Porto Rico provides:

“ The titles of ownership or of other real rights relating to immovables which are not properly inscribed or annotated in the Registry of Property shall not be prejudicial to third persons.”

Article 2 of the Mortgage Law of Porto Rico provides:

“ In the Registries mentioned in the preceding article shall be recorded:

“ 1. Instruments transferring or declaring ownership of realty or of property rights thereto;

“ 2. Instruments by which rights of use, use and occupancy, emphyteusis, mortgage, annuity (censo), servitudes, and any others by which estates are created, acknowledged, modified or extinguished.

“ 3. Instruments or contracts by virtue of which real property or property rights are conveyed to a person, although it is with the obligation of transferring them to others or of investing their value for specified purposes.

“ 4. Writs declaring the legal incapacity for administration, or the presumption of death of absentees, or injunction, or in any way altering the civil capacity of persons with regard to the free disposition of their property.

“ 5. Contracts for the lease of real prop-

“erty for a period exceeding six years, or
“such contracts on which rent has been
“paid in advance for three or more years,
“or, having neither of these conditions,
“they contain a special covenant by which
“record thereof is required.

“6. Title deeds of real property or prop-
“erty rights owned or administered by the
“State, or by civil or ecclesiastical corpora-
“tions, subject to the provisions of law or
“regulations.

“Article 23. The instruments mentioned
“in '2' and '5' which are not duly recorded
“or entered in the Registry cannot preju-
“dice third persons,” etc.

(D) Nevers & Callaghan were entitled as against all persons claiming an interest in the Central Altagracia to the priority which, under the law of Porto Rico, they were entitled as the owners of a “credito refaccionario” (agricultural loan).

In accordance with section 1824 of the Civil Code of Porto Rico, Nevers & Callaghan were entitled to priority as against Valdes.

The said section provides:

“With regard to determined real prop-
“erty and property rights of the debtor, the
“following are preferred:

“1. The credits in favor of the people of
“Porto Rico with regard to the property
“of taxpayers for the amounts of the last
“annual assessments, due and not paid, of
“the taxes which burden the same.

“2. The credits of insurers, with regard

“ to the property insured, for the insuree premium for two years, and should the insurance be mutual for the last two dividends declared.

“ 3. Mortgage and agricultural credits (refaccionarios) entered and recorded in the Registry of Property with regard to the property mortgaged, or which has been the object of the agricultural loan (refacción).

“ 4. Credits, of which a cautionary notice has been made in the Registry of Property by virtue of a judicial mandate, by reason of attachment, sequestration, or execution of judgments, with regard to the property entered therein and only with regard to subsequent credits.

“ 5. Agricultural credits not entered nor recorded with regard to the real estate to which the agricultural loan (refacción) relates, and only with regard to other credits different from those mentioned in the four preceding numbers.”

As the attempted sale and transfer to Valdes was not inscribed in the Registry of Property, Nevers & Callaghan are entitled under the provisions of the foregoing section of the Civil Code of Porto Rico to priority as against Valdes.

(E) The attempted deed of sale of October 28, 1907, was void, because it does not appear that it was authorized by the necessary vote of the stock-holders.

It is clearly apparent from this deed, which is set forth as “Exhibit A” to the answer of Central

Altagracia (page 46, Transcript of Record, Case 196), that it was authorized only at a meeting held by the board of directors.

It is true that the notary recites that the resolution was adopted at a general meeting of the *stockholders*, but the resolution set forth in the deed discloses that it was not a resolution of the general meeting of the stockholders but only a resolution of the *board of directors*.

It needs no argument to sustain the proposition that even if the Central Altagracia, Incorporated, was the owner of the lease and the property composing the Central Altagracia it could not dispose of the same except by authority of the stockholders.

The same point may be made with respect to the conditional sale which was attempted to be made by the Central Altagracia, Incorporated, to Valdes on the 11th April, 1907.

As to Point II.

We contend that under the law of Porto Rico Valdes did not have even an equitable mortgage, as was found by the court below.

We are not satisfied that the establishment of the United States District Court for Porto Rico carried with it the entire body of equity jurisprudence which is enforced in the Federal courts in the United States.

The Civil Code and the mortgage law of Porto Rico must determine the effect of the agreement between Central Altagracia, Incorporated, and Valdes.

To hold that the principles of equity prevail in Porto Rico would mean that in the United States District Court for Porto Rico different remedies and rights could be prosecuted and obtained which are not recognized in the insular courts of Porto Rico.

We contend, therefore, that Valdes was only a general creditor of the Central Altagracia, Incorporated, without having any lien or claim upon the property composing the Central factory, of which he claimed to be the owner.

As to Point III.

If this court should hold that the agreement between the Central Altagracia, Incorporated, and Valdes constituted, as held by the court below, an equitable mortgage, then we insist that such equitable mortgage is subject to the rights acquired by Nevers & Callaghan, innocent third parties, who, by their judgment and levy of execution, without knowledge of the claims of Valdes, are entitled to the collection of their debt.

If the principles of equity apply then the claim of Nevers & Callaghan must be respected and enforced, because it is a claim which results from a

bona fide loan of money and which was enforced by the judgment of the court below and a levy of execution upon property subject thereto.

We respectfully submit, therefore, that the findings and decree of the court below, recognizing and enforcing the claim of Nevers & Callaghan, should be approved and affirmed.

FRANCIS H. DEXTER,
Attorney for Nevers & Callaghan.

[15287]

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Supreme Court, U. S.
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CLERK.

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JAMES H. MCKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1911.

No. 198.

RAMON VALDES,

Appellant,

vs.

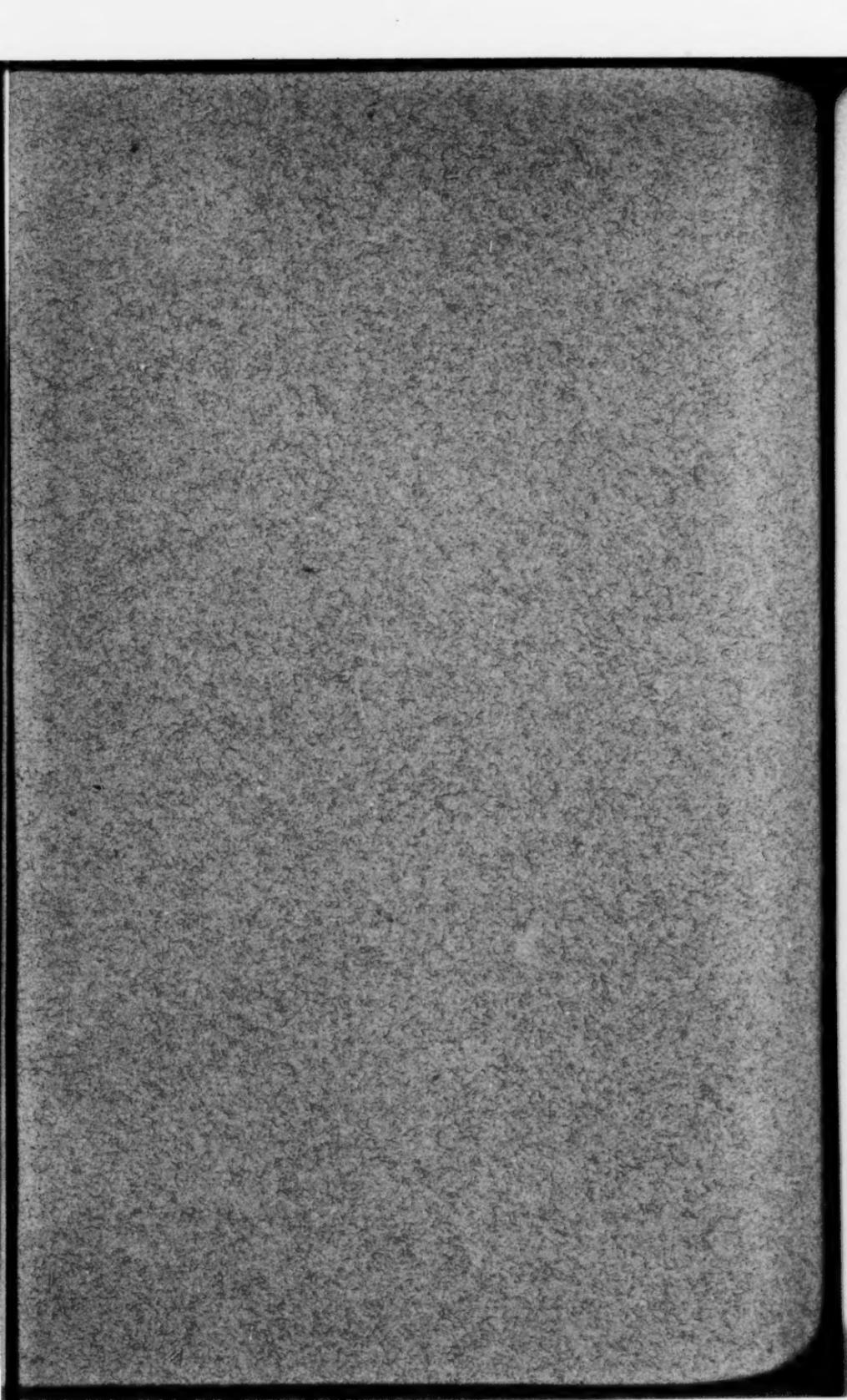
CENTRAL ALTAGRACIA, INCORPORATED, AND
NEVERS & CALLAGHAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR PORTO RICO.

BRIEF FOR APPELLANT.

R. KINGSBURY CURTIS,
HUGO KOHLMANN,
MARTIN TRAVIESO, JR.,

Counsel for Appellant RAMON VALDES.



Supreme Court of the United States,

OCTOBER TERM 1911.

No. 193.

RAMON VALDES,
Appellant,

v.

CENTRAL ALTAGRACIA, INCOR-
PORATED, and NEVERS &
CALLAGHAN.

Appeal from the
District Court
of the United
States for Porto
Rico.

BRIEF FOR APPELLANT.

Statement of Facts.

On January 18th, 1905, Salvador Castello and Joaquin Sanchez de Larragoiti entered into a contract in writing, whereby Sanchez de Larragoiti, who was the owner of the old Central Altagracia, and twenty-two cuerdas of land, leased these properties to Salvador Castello for a term of ten years (Record, pp. 44-46). Said Central and lands were to be used by the lessee for the manufacture of sugar.

On June 6th, 1905, a supplemental agreement was entered into between the same parties, whereby the duration of the lease was extended from ten to twenty years (Record, p. 46).

On July 1st, 1905, Salvador Castello, by a public instrument, transferred and assigned to Central Altgracia, Incorporated, a Maine corporation, all his rights under the contract between him and Sanchez de Larragoiti (Record, pp. 46-50).

On April 11th, 1907, the Central Altgracia, Incorporated, being indebted to Ramon Valdes in the sum of \$35,000, made a conditional sale (venta con pacto de retro), maturing April 1, 1908, of the machinery of the said Central to said Ramon Valdes (Record, pp. 50-53). This conditional sale was authorized by the Board of Directors of the Central, but was neither authorized nor ratified by the stockholders of the corporation.

On October 28th, 1907, that is, before the consummation of the conditional sale, a public instrument was executed between the Central Altgracia, Inc., and Ramon Valdes, whereby the said corporation, represented by its president, F. L. Cornwell, who was duly authorized for such purpose by resolutions of the stockholders and directors of the company, sold, assigned and transferred, absolutely, to Ramon Valdes,

(a) the contract of lease and all other rights which the company acquired from Salvador Castello, which said rights were such as were acquired by the latter from Don Joaquin Sanchez de Larragoiti, and

(b) "each and every right appertaining to the company in and to the machinery, utensils and appurtenances that existed on the properties of the Central Altgracia at the time that the contract of lease was assigned to the Company, as well as such rights as the Company has in and to the machinery, utensils and appurtenances installed by it thereafter on the said properties" (Record, pp. 42-54, at 53).

The consideration for said absolute sale was the sum of \$65,000, confessed to have been received by the company from Valdes. Of this amount, \$35,000 represented the amount owing by the company to

Valdes under the above-mentioned conditional sale agreement of April 11, 1907, and \$30,000 had been received afterwards by the company in cash (Record, p. 53).

After becoming the sole and absolute owner of the rights of the Central to the contract of lease and the machinery by virtue of the said deed of October 28th, 1907, Ramon Valdes, on November 2nd, 1907, made a new contract with Central Altagracia, Incorporated, whereby, he *conditionally sold* to the said company the same rights acquired by him by the deed of October 28th, 1907 (Record, pp. 55-59). The price of this sale was the sum of \$65,000, which sum the company agreed to pay to Valdes in four installments, payable on the first day of April of the years 1908, 1909, 1910 and 1911 respectively (Record, p. 56).

It was expressly stipulated in and by this contract of November 2, 1907, that upon a failure to pay any one of the four installments of the purchase price, the total sum would at once become due and payable and that the vendor Valdes was thereupon to have the right to enter and take possession of the properties conditionally sold by him to the company (Record, p. 57).

It was further stipulated in and by this contract that the title and right of ownership over the said lease, machinery and other properties was to remain in Valdes and would not pass from him to the vendee, Central Altagracia, Inc., until the total purchase price was paid; and that in case of default Valdes should have the right to take possession as the owner thereof (Record, p. 57).

The first installment of the purchase price under the said contract became due on the first day of April, 1908; and the Central Altagracia made default in the payment of the said installment and also failed to pay the interest due on the total purchase price (Record, pp. 3, 39).

On May 27th, 1908, the defendants, Nevers and Callaghan, who had obtained a judgment for \$15,-

878.87 in the United States District Court for Porto Rico, against the Central Altagracia, levied upon all the machinery in the factory building of the said Central Altagracia for the satisfaction of the said judgment (Record, p. 79).

The judgment in favor of Nevers & Callaghan under which this levy was made was entered on May 16, 1908, and represented the balance of a total indebtedness of \$25,000 on an unsecured loan made in October 1906 (Record, p. 79).

Neither the contracts between Valdes and Central Altagracia, Incorporated, nor the debt or levy of Nevers & Callaghan were recorded in the Registry of Property.

On June 2nd, 1908, Valdes filed his suit at law in the Court below claiming the possession of the properties by him conditionally sold to the Central Altagracia, Inc., and claiming \$10,000 as damages for the detention of the premises. On the same date, and as supplemental to his suit at law, Valdes filed his bill of complaint on the Equity side of the Court, containing substantially the same allegations as, in the suit at law and praying for the appointment of a receiver (Record, pp. 1-5).

On the same day the Central Altagracia, Inc., filed its bill in equity praying also for the appointment of a receiver (Record, pp. 7-12).

The Court thereupon appointed a temporary receiver and custodian and later, after consolidating the two causes by an order dated July 20, 1908, appointed a permanent receiver of the above-mentioned leasehold and other properties. This permanent receiver entered into possession and continued in the management of said properties until the sale thereof under the decree of October 14, 1909.

The receivership resulted in a loss of about \$17,000, represented in part by outstanding receiver's certificates (Record, pp. 89, 100-101).

On July 21, 1909, the demurrers which had been interposed in each of the two causes were overruled, and the defendants in each case were required to

answer on or before July 26, 1909, so that the trial of the issues thus raised might begin the following day. This order contained the proviso that "nothing in this order shall prevent the parties in either case, as may be proper, from immediately amending their bills or from filing a cross bill in addition to an answer, but in such case, the latter shall be considered as denied, and issue made as may be proper so that the trial may proceed notwithstanding" (Record, pp. 24-25).

Accordingly, the following proceedings thereupon took place in the two causes respectively:

(a) Cause in which Central Altagracia, Incorporated, was plaintiff:

In this cause, plaintiff, pursuant to the permission contained in the above order of July 21, 1909, filed an amended bill of complaint on July 22, 1909 (Record, pp. 29-36), to which the defendant Valdes on July 27, 1909, filed an answer and cross-bill (Record, pp. 65-73, 73-77), the complainant thereupon refusing to file any further pleadings within the time allowed by the Court.

(b) Cause in which Valdes was complainant:

In this cause Central Altagracia, Incorporated, on July 24, 1909, filed its answer (Record, pp. 37-59), to which Valdes filed his replication on July 28, 1909 (Record, pp. 85-86).

Nevers & Callaghan were made parties defendant, and on July 27, 1909, filed their answer and cross-bill to the bill of complaint and cross-bill of Valdes filed in the two causes respectively (Record, pp. 78-82), whereupon Valdes filed his replication to the answer of Nevers & Callaghan (Record, p. 83), and his answer to the cross-bill of Nevers & Callaghan (Record, pp. 84-85).

The Court below in its decision (Record, pp. 86-95) declined to give effect to the agreements between Valdes and Central Altagracia, Incorporated, of Oc-

tober 28, 1907, and November 2, 1907, according to their terms, but held that these resulted in an equitable mortgage or lien in favor of Valdes for \$65,000 and interest inferior to the lien obtained by Nevers & Callaghan by the levy of their execution on May 27th, 1908, prior to the application for the receivership in the present cause. Accordingly, the decree of the Court below was for the foreclosure of the equitable mortgage or lien found by the Court to exist in favor of Valdes, with the provision that the proceeds of sale should be applied to or toward the payment of the claims in the following order:

1. Outstanding debts of receivership.
2. Nevers & Callaghan's claim.
3. Valdes' lien for \$65,000 and interest.
4. All other creditors. (Record, p. 102.)

Upon the sale made pursuant to the final decree below Valdes became the purchaser, and was placed in possession of the leasehold and other properties theretofore covered by the receivership.

Since, as is contended on his behalf on this appeal, Valdes was, under the agreements of October 28, 1907, and November 2, 1907, the absolute owner of the properties involved and as such entitled to the absolute possession thereof, he is, although now in possession under the decree of October 14, 1909, nevertheless prejudiced by said decree in so far as it obliged him to pay as a condition of obtaining such possession the Nevers & Callaghan judgment against Central Altagracia, Incorporated. Valdes has, therefore, taken this appeal from the last mentioned decree to the extent to which it so prejudices him.

This appeal therefore is more particularly from such portions of the decree as declared the claim of Nevers & Callaghan to be a lien superior to that of the Valdes claim and which required that Valdes, as the purchaser at the sale should, in addition to the costs and receivership debts, pay into the registry of

the Court the full amount of the Nevers & Callaghan claim.

The following assignments of error (Record, pp. 105-107) indicate in what the decree below is claimed to be erroneous and the grounds of the present appeal:

I. "That the District Court of the United States for the District of Porto Rico erred in not finding that Ramon Valdes was and is the absolute owner of the property of the Central Altagracia, Incorporated, by virtue of the contracts executed on the 28th of October and 2nd of November, 1907, respectively, by and between the Central Altagracia, Incorporated, and the said Ramon Valdes.

II. "That the said Court having found the transactions between Ramon Valdes and the Central Altagracia, Inc., did not amount to fraud in law upon the creditors of the said corporation, committed error in not holding that the said Ramon Valdes had a right and was entitled to the immediate possession of the property of the said Central by virtue and under the express terms of the said contracts of October 28 and November 2, 1907.

III. "That the said Court erred in finding that the transaction between the Central Altagracia, Incorporated, and Ramon Valdes, notwithstanding the express stipulation of the instruments executed between the parties, was a loan of money for which security was intended to be given, and that the legal effect of the aforesaid contracts of October 28th and November 2nd, 1907, between the Central Altagracia, Incorporated, and Ramon Valdes, was to create an equitable mortgage or lien over the property of the Central Altagracia, Incorporated, and in favor of the said Ramon Valdes for the sum of Sixty-five thousand dollars (\$65,000), together with the interest stipulated in the said contracts, and that as to the other amounts claimed by the said Ramon Valdes, he is but a general creditor of the corporation.

IV. "That the said Court erred in finding that Nevers & Callaghan acquired a lien and

prior rights over the property of the Central Altagracia, Incorporated, by virtue of the execution levied upon the property on the 29th of May, 1908, and in holding the said lien to be superior to the equitable mortgage or lien found to exist over the said property and in favor of the said Ramon Valdes.

V. "That the said Court erred in holding that the said contracts of October 28 and November 2, 1907, could not bind or prejudice Nevers & Callaghan because they were not recorded; and it also erred in holding that the said Nevers & Callaghan were third parties within the meaning of the law providing for the registration of deeds of real property.

VI. "That the said Court erred in ordering the sale of the property of the Central Altagracia, Incorporated, which is the same claimed by Ramon Valdes to be his absolute property by virtue of the aforesaid contracts.

VIII. "That the said Court erred in decreeing that out of the proceeds of the said sale the claim of Nevers & Callaghan must be paid in full and before payment of the equitable mortgage or lien found to exist over the property of the Central Altagracia, Incorporated, and in favor of Ramon Valdes.

X. "That the said Court erred in holding that the said Ramon Valdes, in case he should become the purchaser at the sale must, in addition to the costs and receivership debts, pay in full into the Registry of the Court the claim of Nevers & Callaghan."

The record consists of the pleadings and the decision and decree below; it does not contain any evidence on any questions of fact and the appeal raises only questions of law as to the legal effect of instruments the execution of which is admitted.

A R G U M E N T.

POINT I.

Valdes through the transfer to him by Central Altamagracia, Incorporated, of October 28, 1907, became the owner of the leasehold and all machinery and appurtenances, and under the conditional sale agreement of November 2, 1907, between him and Central Altamagracia, Incorporated, the ownership of these properties continued in Valdes pending the payment by the vendee of the stipulated purchase price.

Pursuant to the votes of its stockholders as well as its directors (Record, p. 43) Central Altamagracia, Incorporated, by the public instrument of October 28, 1907 (Record, pp. 42-54), sold assigned and transferred to Valdes its leasehold under the Sanchez leases, and all its rights to the machinery and appurtenances (Record, p. 53) for the sum of \$65,000, which the company then owed Valdes (Record, pp. 43, 53).

Valdes, thereupon, on November 2, 1907, made a conditional sale of the same properties to Central Altamagracia, Incorporated (Record, pp. 55-59), under a contract providing for the payment of the purchase price of \$65,000 in installments, and further providing "that the 'dominio' and ownership of the contract of lease and of all other rights which are the object of this contract will belong exclusively to Valdes y Cobian, while the Company shall not have paid in full the price" of said properties (Record, p. 57).

The Court below declined to give effect to these

instruments of October 28 and November 2, 1907, according to their terms, and, refusing to recognize Valdes as the owner of the properties in question, treated the entire transaction as resulting in a chattel mortgage by the company in favor of Valdes for \$65,000.

This, it is submitted, was error.

Under the law of Porto Rico there are two fundamental principles governing the interpretation of contracts (1) great freedom in the making of contracts, and (2) great strictness in their interpretation. Sections 1222, 1058 and 1248 of the Civil Code of Porto Rico provide as follows:

“ SECTION 1222.—The contracting parties may make the agreement and establish the clauses and conditions which they may deem advisable, provided they are not in contravention of law, morals or public order.

SECTION 1058.—Obligations arising from contracts have legal force between the contracting parties, and must be fulfilled in accordance with their stipulations.

SECTION 1248.—If the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, the literal sense of its stipulations shall be observed.”

The sections quoted were taken bodily from the Civil Code of Spain, and hence the Spanish authorities relating to these sections are in point.

The recent work on the Spanish Civil Code by the distinguished commentator don José María Manresa y Navarro, referring to Article 1281 of the Spanish Code, which corresponds to Section 1248 of the Porto Rican Code above quoted, says at page 704 of Volume VIII:

“ En principio la ley coloca la intención de los contrayentes, que es el alma del contrato, sobre las palabras, que son el cuerpo en que aquella se encierra, y tan es así, que cuando se atiende al sentido literal, es porque, siendo los términos claros, se supone que en ellos

está la voluntad de los contratantes; en suma, valen las palabras, no por si, por lo que dicen. Pero la prevención contra el litigio, el temor de que lo hasta entonces claro quede oscurecido, y el de que lo cierto, las palabras inequívocas, se cambien por lo dudoso, hace que el sentido literal de los términos tenga una influencia extraordinaria, impidiendo, cuando aquéllos son claros, que se planteen problemas difíciles, en averiguación del propósito de los contratantes."

(Translation.)

"In principle, the law, in order to ascertain the intention of the contracting parties, which is the soul of the contract, looks to the words, which constitute the body in which that soul is enclosed. The literal sense of the words is adhered to, because, where such words are clear, they are assumed to express the will of the contracting parties. To sum up, the words are important, not in themselves but because of what they express. The extraordinary influence thus exerted by the literal sense of the words flows from the desire to avoid litigation, from the fear that what has been clear may become involved in doubt, and that what has been certain in the shape of unequivocal expressions may be superseded by what is doubtful. When expressions are clear, it is thus possible to avoid those difficult questions which involve an investigation into the intentions of the contracting parties."

Applying these principles the Court below should have held that by virtue of the instruments executed by the corporation to Valdes, and by Valdes to the corporation, Valdes became and continued to be the owner of the properties under consideration, pending the payment of the price mentioned in the conditional sale agreement.

Under well settled precedents, this contract of conditional sale was binding not only on the parties thereto, but was effective also as to prior and subsequent creditors of the vendee.

The condition that the sale shall be ineffectual if

the price is not paid within the time specified in the contract is well known and very frequent in the old Spanish legislation. Such stipulation was called "Pacto de la Ley Comisoria."

See Ley XXXVIII, Title V, Quinta Partida.

The decision of the Supreme Court of Spain in the case of *Luisa Blanchart v. Ladislao Redondo and Jose Pillado* is directly in point. This case was decided February 16, 1894, and is reported in "Jurisprudencia Civil, Tribunal Supremo de Justicia," Vol. LXXV, p. 215 (See also Anuario de 1894, apendice al "Diccionario de Administracion," de Alcubilla, pp. 202 and 203, Madrid, 1894).

This case arose under Article 1255 of the Spanish Code, which is identical with Section 1222, above quoted, of the Porto Rican Code, and directly sustained the validity of a conditional sale, holding that title to the thing thus sold remained in the vendor, after delivery of possession to the vendee, even as against third parties. The facts briefly were as follows:

Luisa Blanchart sold to Ladislao Redondo several properties, which she delivered to the vendee under an inventory; but the vendor reserved to herself the title to the properties sold, until the payment by the vendee of the purchase price. Jose Pillado, a creditor of Redondo the vendee, attached the properties in a suit against Redondo; and then Mrs. Blanchart intervened in the suit claiming that she was the owner of the properties attached by Pillado.

The Court admitted the intervention, and an appeal having been taken to the Supreme Court of Spain, the latter Court held that Mrs. Blanchart was entitled to the possession and ownership of the properties.

The Supreme Court of Spain, speaking of the stipulation whereby the vendor reserved the title to the properties, said at page 220:

“Considerando que semejante contrato es perfectamente lícito y obligatorio entre los que lo celebraron, y en nada se opone á los preceptos legales que se suponen infringidos en los motivos cuarto, quinto y sexto, toda vez que, según precepto terminante del art. 1255 del Código civil, los contratantes pueden establecer los pactos, cláusulas y condiciones que tengan por conveniente, y no cabe afirmar que la venta de los muebles concertada entre doña Luisa Blanchard y don Ladislao Redondo y cesión que desde luego le hizo para su uso y disfrute, reservándose, no obstante, el dominio de ellos hasta que se pagara el precio, condición que se estableció como garantía en beneficio de la vendedora, se oponga de modo alguno á las leyes, á la moral ni al orden público.”

(Translation.)

“Such stipulation is perfectly legal and binding between the contracting parties and is not contrary to the legal provisions thought to have been violated, inasmuch as according to the express language of Section 1255 of the Civil Code the contracting parties may agree to all the stipulations, clauses and conditions which they may deem convenient; and it cannot be alleged that the contract of sale with the delivery of the possession made between Luisa Blanchard and Ladislao Redondo, whereby the vendor reserved the title to the property until payment of the price (which condition was established as a security for the benefit of the vendor) is a contract contrary to law, or against morals or public policy.”

*Jurisprudencia Civil, Tribunal Supremo
De Justicia, Vol. LXXV, p. 220.*

Interpreting the Porto Rican Code in the light of the above Spanish decision, the conditional sale from Valdes to Central Altagracia, Incorporated, was

clearly valid under the Porto Rican law and, pursuant to it, Valdes was entitled to the possession and ownership of the properties as against the levy under the Nevers Callaghan judgment.

Similarly and commenting on the same Article 1255 of the Spanish Code, but referring to another decision, Manresa, in his well recognized "Commentaries on the Spanish Civil Code", says at page 607 of Volume VIII of said work:

"La sentencia de 6 de Marzo de 1906, declara válido, como no contrario á las leyes, á la moral ni al orden público, el pacto de no trasmisirse la propiedad de la cosa vendida, al comprador, hasta abonar éste el último plazo de su precio, y en su consecuencia, si no se abona alguno de los últimos, se entiende que se trasmitió solo el uso ó disfrute, y puede reclamarse por el vendedor la propiedad."

(Translation.)

"The decision of March 6, 1906, declared that a stipulation that title to the thing sold should not pass to the purchaser until the payment of the final installment of the purchase price, was valid on the ground that it was not contrary to statutes, morals or public order, and consequently if any such installments be not paid, it is understood that what was conveyed was only the use or enjoyment of the thing, and that the vendor may claim the title or ownership thereof."

Additional authority in favor of appellant's contention is found in Section 1081 of the Porto Rican Code and the Spanish decisions bearing on corresponding provisions of the Spanish Code.

Section 1081 of the Civil Code of Porto Rico provides as follows:

"In conditional obligations, the acquisition of rights as well as the extinction or loss of those already acquired, shall depend upon the event constituting the condition."

This section is taken bodily from the Civil Code of Spain and corresponds to Article 1114 of the latter. The Supreme Court of Spain in the case of *Urrea against Perez and another* (Civil Cause No. 65, reported in "Jurisprudencia del Tribunal Supremo", Vol. LXXX, at p. 254), decided on October 7, 1896, held that an agreement to sell certain property at an agreed price to be paid part down and the balance at the end of a year, was not a sale whereby title passed to the vendee, but merely a promise to sell which terminated upon the expiration of the period fixed for the payment of said balance and that the title remained in the vendors unless the vendee paid the balance of the purchase price before the expiration of the period agreed upon. Said the Court at page 258:

"Considerando que, según el sentido general de la escritura de 20 de Febrero de 1890, otorgada por don Andrés Pérez y don Andrés Márquez con doña Eugenia Urrea, y muy especialmente lo consignado en su cláusula 1.ª, el concepto jurídico del contrato en ella celebrado no es otro que el de promesa de cesión condicional de las tres quintas partes de la mina El Globo y sus demásas, puesto que para ponerse la cesionaria en situación de pedir el cumplimiento de la obligación, era condición expresa e ineludible la de haber entregado en el día fijo, que al efecto se señala, la cantidad de 11,000 pesetas al Pérez y 15,000 al Márquez, sin cuyo requisito quedaba nula y sin efecto legal la promesa de cesión y sin derecho la cesionaria a reclamación alguna, no teniendo aplicación al caso el art. 1450 del Código civil, como se supone en el primer motivo del recurso, y siendo rectamente aplicado por la Sala sentenciadora el 1114, según el cual, la adquisición de los derechos en las obligaciones condicionales depende del acontecimiento que constituya la condición."

(Translation.)

"According to the general significance of the deed of February 20, 1890, by and between Andres Perez and Andres Marquez, of the one

part, and Eugenia Urrea, of the other part, and especially the provisions of clause first thereof, the juridical concept of the contract therein made is solely that of a conditional promise to transfer three-fifths of 'El Globo' mine and annexes for the reason that in order to be in a position to demand the fulfillment of the obligation, the transferee must in accordance with the express and unavoidable condition agreed on have delivered upon the date agreed upon the sum of 11,000 pesetas to Perez and 15,000 to Marquez, and failing to comply with this requirement, the promise to transfer the property became null and void and without any legal effect, and the purchaser had no lawful claim therefor, as Article 1450 of the Civil Code cannot be applied to the present case, notwithstanding the allegation in the first of the grounds of the appeal, and the lower Court having correctly applied to the present case Article 1114 according to which the acquisition of rights in conditional obligations depends upon the event constituting such condition."

It is submitted, therefore, that under the Porto Rican law, Valdes clearly continued to be and at the time of the levy under the Nevers & Callaghan judgment, was the owner of the properties in question. It follows that the levy was not on property of the judgment debtor, Central Altamaria, Incorporated, and was therefore invalid. Valdes could not be required to pay the judgment in order to release *his* property from such invalid levy and the decree in so far as it required this is erroneous.

The effect of the decision of the Court below was practically this: it held that the transaction between Valdes and Central Altamaria, Incorporated, was not the perfectly valid transaction which upon the face of the instruments of October 28th, 1907, and November 2, 1907, it purported to be, but that notwithstanding the express terms of these instruments the transaction was an equitable mortgage from the company to Valdes. Having thus assumed

the transaction to be something different from what the parties by their acts made it, the Court thereupon held such assumed transaction to be a chattel mortgage unknown to the Porto Rican law and therefore giving Mr. Valdes no rights superior to the subsequent levy under the Nevers & Callahan judgment.

After Central Altagracia, Incorporated, and Valdes, presumably acting under legal advice based upon the authorities above mentioned, had entered into agreements which under these authorities made Valdes the owner of the property under consideration, with rights superior to those of any creditor of Central Altagracia, Incorporated, what reason or warrant could there be for the action of the Court below in holding the transaction to be not what under these authorities it might well be, but on the contrary holding it to be a transaction unknown to the Porto Rican law?

POINT II.

The contract of conditional sale by Valdes to Central Altagracia, Incorporated, was valid both as between the parties to the contract and also as against creditors of the vendee and the property covered thereby was therefore not subject to execution for debts of the vendee.

The validity of the contract of conditional sale of November 2, 1907, under the Porto Rican law has been established in Point I.

See *Blanchart v. Redondo, supra*.

The general rule of law laid down by the United States Supreme Court as applicable in the absence

of local statutes or decisions, also sustains the validity of this conditional sale both as between the parties and as against creditors of the vendee.

Harkness v. Russell, 118 U. S., 663.

Wm. W. Bierce, Ltd., v. Hutchins, 205 U. S., 340.

Bryant v. Swofford Bros., 214 U. S., 279.

The entire subject was fully discussed by this Court in *Harkness v. Russell, supra*, and the Court, after considering the decisions in the various States, laid it down as the general rule, deemed by it to be established by overwhelming authority, "that, in the absence of fraud, an agreement for conditional sale is good and valid, as well against third parties as against the parties to the transaction," and that "a bailee of personal property cannot convey the title or subject it to execution for his own debts, until the condition on which the agreement to sell was made has been performed."

Harkness v. Russell, 118 U. S., 663, at 681.

In the absence of any statute requiring registration, such contract of conditional sale is valid, without being recorded.

Bryant v. Swofford Bros., 214 U. S., 279, 291.

Journey v. Priestly, 70 Miss., 584.

"It has long been the settled rule of this Commonwealth that a sale and delivery of goods, on condition that the property is not to vest until the purchase money is paid or secured, does not pass the title to the vendee; and that the vendor, in case the condition is not fulfilled, has a right to repossess himself of the goods both against the vendee and against his creditors claiming to hold them against attachments."

" All the cases turn on the principle that the compliance with the conditions of sale and delivery is, by the terms of the contract, precedent to the transfer of the property from the vendor to the vendee. The vendee in such cases acquires no property in the goods. He is only a bailee, for a specific purpose. The delivery which in ordinary cases passes the title to the vendee must take effect according to the agreement of the parties, and can operate to vest the property only when the contingency contemplated by the contract arises. The vendee, therefore, in such cases, having no title to the property, can pass none to others. He has only a bare right of possession, and those who claim under him, either as creditors or purchasers, can acquire no higher or better title. Such is the necessary result of carrying into effect the intention of the parties to a conditional sale and delivery. Any other rule would be equivalent to the denial of the validity of such contracts. But they certainly violate no rule of law, nor are they contrary to sound policy.

Bigelow, *J.* in *Coggill v. Hartford & N. H. R. Co.*, 3 Gray, 545. (Mass.).

For additional authorities on this point, see

- The Marina*, 19 Fed. Rep., 760.
- Blackwell v. Walker*, 5 Fed. Rep., 419.
- Rodgers v. Bachman*, 109 Cal., 552.
- Kohler v. Hayes*, 41 Cal., 455.
- Sargent vs. Metcalf*, 5 Gray, 306.
- Deshon vs. Bigelow*, 8 Gray, 159.
- Hirschorn vs. Caney*, 98 Mass., 149.
- Sere v. McGovern*, 65 Cal., 244.
- Herring v. Hoppock*, 15 N. Y., 409.
- Ballard v. Burgett*, 40 N. Y., 314.
- Cole v. Mann*, 62 N. Y., 1.
- Bean v. Edge*, 84 N. Y., 510.

POINT III.

The transfer from Central Altamaria, Incorporated, to Valdes, and the conditional sale from the latter to the former being clear on their face and representing a transaction valid in every respect, no extraneous evidence of any intention to effect a transaction different from that represented by these instruments can be considered.

“The following presumptions and no others are deemed conclusive:

2. The truth of the facts recited, from the recital in a written instrument, between the parties thereto, or other successors in interest by a subsequent title.”

Section 101, Law of Evidence of P. R.

“Public instruments are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

“They shall also be evidence against the contracting parties and their legal representatives, with regard to the declarations the former may have made therein.”

Section 1186, Civil Code of Porto Rico.

See also, Sections 1222, 1223 and 1245 of Civ. Code of Porto Rico.

“If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal sense of its stipulations shall be observed.”

Section 1248, Civil Code of Porto Rico.

“It is a general rule of the law of evidence, that a written contract, unambiguous in its

terms, cannot be varied, contradicted, modified by parol evidence of anything that occurred at or prior to the time when such written contract was executed."

See

11 Eng. & Am. Enc. of Law, p. 548.
Shanklin v. Washington, 5 Pet., U. S., 590.
Ins. Co. v. Wilkinson, 13 Wall, U. S., 231.
Hancock v. Cossett, 45 Fed. Rep., 754.
Burness v. Scott, 117 U. S., 582.

"When the terms of an agreement have been reduced to writing by the parties it is considered as containing all those terms, and as between the parties there can be no other evidence of the terms of the agreement."

"All the oral negotiations and agreements concerning the exchange of lands are merged in the deeds and mortgages given in pursuance of such negotiations, and evidence of prior negotiations contradicting the terms of such instruments, is inadmissible."

Beall vs. Fischer, 95 Cal., 568.

"The plaintiff was entitled to the benefit of the rule that evidence of what was said between the parties to a valid instrument in writing, either prior to or at the time of its execution, cannot be received to contradict or vary its terms."

Thomas vs. Scutt, 127 N. Y., 133.

Braddy vs. Nally, 151 N. Y., 258.

"The general rule requires the rejection of parol evidence, when offered to cut down or take away obligations entered into between the parties and by them put in writing. And the reason of the rule suggests its application and its limitations. 'It would be inconvenient,' says Lord Coke, 'that matters in writing made by advice, and on consideration, and which finally import the certain truth of the agreement between the parties,

should be controlled by an averment of the parties to be proved by the uncertain testimony of slippery memory.'"

Chapin v. Dobson, 78 N. Y., 74.

Perry v. Bigelow, 128 Mass., 129.

Frost v. Brigham, 139 Mass., 43.

McGuinness v. Shannon, 154 Mass., 86.

POINT IV.

The levy under the Nevers & Callaghan judgment against Central Altagracia, Incorporated, is equally invalid if the machinery levied upon be assumed to be real estate under the law of Porto Rico.

Regarding, as the Court below apparently did, the leasehold and machinery as personal property, the foregoing points dispose of all claims of priority for the Nevers & Callaghan judgment.

Counsel for Nevers & Callaghan, who in the court below purported to represent also the heirs of Joaquin Sanchez de Larragoiti, the original lessor of the Central Altagracia properties, claimed, however, in the court below that the machinery placed in the Central constituted permanent fixtures attached to the soil and as such constituted real property under the law of Porto Rico.

Such contention, if correct, would be a strong argument in favor of the *Sanchez estate* which is *not*, however, a party to this litigation, but would directly defeat the levy under the Nevers & Callaghan judgment.

Articles Third and Eighth of the contract of lease of January 18, 1905, between Joaquin Sanchez de

Larragoiti and Salvador Castello provide respectively as follows:

"3rd. In brief, the right and powers that Don Joaquin Sanchez de Larragoiti grants unto Don Salvador Castello, are to operate and work the said property for his account, and introduce therein such machinery as he may deem convenient; which said machinery, at the end of the years mentioned in Article 1st hereof, *shall become the exclusive property of Don Joaquin Sanchez de Larragoiti.*"

"8th. Upon the expiration of the term agreed on under this contract, any improvement or machinery installed in the said Central *shall remain for the benefit of Don Joaquin Sanchez de Larragoiti;* and Don Salvador Castello shall have no right to claim anything for the improvements made" (Record, pp. 44-45).

Assuming, therefore, for the purposes of this argument that the machinery installed in the Central by Castello or his assigns became a part of the leasehold, it would, under the terms of the lease, have become the property of the owners of the fee, viz., the Sanchez heirs, and could not have been levied upon under a judgment against the lessee. Nor would a levy upon real property be valid, under Section 240, subdivision 1, of the Code of Civil Procedure of Porto Rico, without a showing that sufficient personal property for the satisfaction of such judgment could not be found.

The levy on the machinery under the Nevers & Callaghan judgment does not therefore give these judgment creditors of Central Altagracia any superior lien, no matter whether the property be regarded as real or personal estate. The decree appealed from is therefore clearly erroneous in so far as it adjudges such superior lien in favor of Nevers & Callaghan by reason of such levy.

POINT V.

The decree below, in so far as it directs that out of the proceeds of sale the Nevers & Callaghan judgment should be paid in priority to the Valdes claims, and in so far as it requires Valdes as purchaser at the sale to pay the amount of this judgment into Court, should be reversed.

At shown in this brief, the decree below, instead of providing for the foreclosure of an assumed mortgage in favor of Valdes, should have placed Valdes in possession of the properties of which, under the instruments of October 28 and November 2, 1907, he was the absolute owner. However, as the decree below has now been executed by a sale thereunder, at which Valdes became the purchaser of the properties of which he is now in possession, the injury to Valdes from the decree below, although entered on an entirely erroneous theory, consists mainly in his being obliged to pay in cash the amount of the Nevers & Callaghan judgment. This can be corrected by modifying or reversing, as above suggested, the portion of decree relating to the application of the proceeds of sale and the payment of the bid price, without affecting the sale which has already taken place under the decree.

Respectfully submitted,

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HUGO KOHLMANN,
MARTIN TRAVIESO, Jr.,
Counsel for Appellant Ramon Valdes.

Supreme Court of the United States.

OCTOBER TERM, 1914.

No. 196.

Miss Sophie Bell, L. L.
FILED.

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JAMES H. MCKENNEY,
CLERK.

CENTRAL ALTAGRACIA, INCORPORATED

Appellant.

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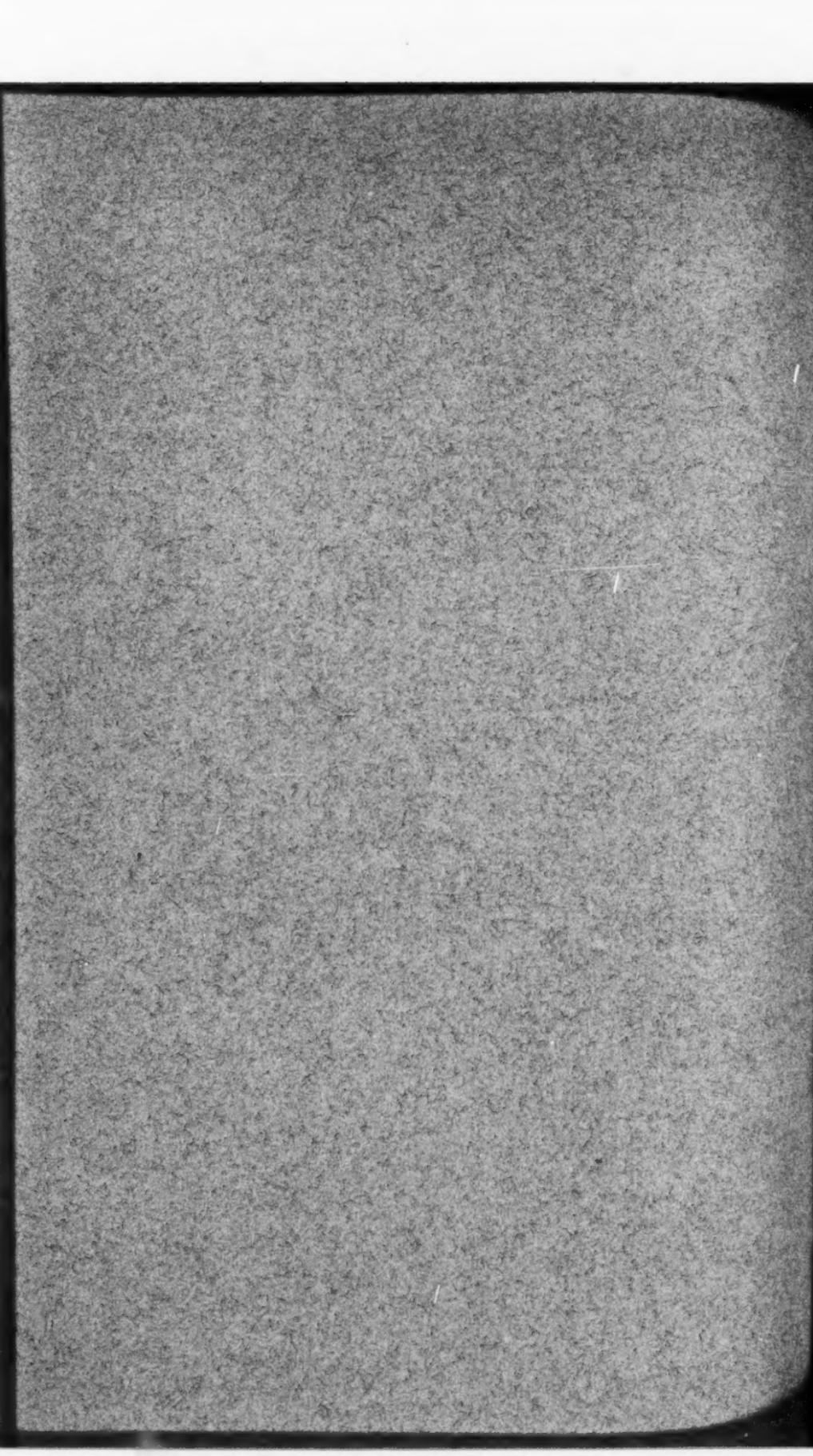
RAMON VALDES, AND GEORGE C. NEVERS, GEORGE B. ACKER-
SON AND JAMES G. CALLAGHAN, COPARTNERS DOING BUSINESS
UNDER THE FIRM NAME OF NEVERS & CALLAGHAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR PORTO RICO.

BRIEF FOR APPELLEE RAMON VALDES

P. KINGSBURY CURTIS,
HUGO KOHLMANN,
MARTIN TRAVIESO, JR.,

*Counsel for RAMON VALDES, Appellee
in No. 196 and Appellant in No. 193.*



Supreme Court of the United States,

OCTOBER TERM, 1911. No. 196.

CENTRAL ALTAGRACIA, INCOR-
PORATED,
Appellant,

VS.

RAMON VALDES, and GEORGE
C. NEVERS, GEORGE B.
ACKERSON and JAMES G.
CALLAGHAN, copartners do-
ing business under the firm
name of Nevers & Callaghan.

Appeal from the
District Court of
the United States
for Porto Rico.

BRIEF FOR APPELLEE RAMON VALDES.

Statement of Facts.

The present litigation arises primarily out of two instruments or agreements entered into between the appellant Central Altagracia, Incorporated, and the appellee Ramon Valdes affecting a certain leasehold and other properties in Porto Rico.

These instruments are set forth in full on pages 46 to 58 and pages 58 to 62 of the Record respectively.

By the first of these instruments, dated October 28, 1907, Central Altagracia, Incorporated, represented by its president, F. L. Cornwell, who was duly authorized for such purpose by resolution of

the stockholders and directors of the company, sold, assigned and transferred absolutely to Ramon Valdes, in consideration of \$65,000 acknowledged to have been received by the company from Valdes:

(a) The contract of lease and all other rights of the company under the lease from Joaquin Sanchez de Larragoiti to Salvador Castello, dated January 18, 1905 (Record, pp. 47-49), and the extension thereof, dated June 6, 1905 (Record, pp. 49-50), which had theretofore, on July 1, 1905, been assigned by Castello to the appellant (Record, pp. 50-53), and

(b) Each and every right appertaining to the company in and to the machinery, utensils and appurtenances that existed on the properties of the Central Altagracia at the time the contract of lease was assigned to the company, as well as such rights as the company has in and to the machinery, utensils and appurtenances installed by it thereafter on said properties (Record, pp. 46-57, at p. 56).

By the second of the above public instruments, dated November 2, 1907, Valdes conditionally sold to Central Altagracia, Incorporated, the same properties and rights which were acquired by him under the instrument of October 28, 1907 (Record, pp. 58-62).

The price of this sale was the sum of \$65,000, which the company in said agreement agreed to pay to Valdes in four instalments payable on the 1st day of April, of the years 1908, 1909, 1910 and 1911, respectively (Record, p. 60).

It was further stipulated in this contract of November 2, 1907, that upon failure to pay any one of the four instalments of the purchase price the total sum should at once become due and payable, and that Valdes was thereupon to have the right to enter and take possession of the properties conditionally sold by him to the company (Record, p. 60), and further that the title and ownership of the

lease, machinery and other properties was to remain in Valdes until the total purchase price was paid (Record, pp. 60-61).

Upon the default by Central Altamaria, Incorporated, in the payment of the instalment of purchase price maturing April 1, 1908, and also of the interest due on that date on the total purchase price (Record, p. 3), the present litigation arose.

History of Litigation.

The present litigation was commenced by the filing on June 2, 1908, of two petitions or bills, one by Valdes and the other by Central Altamaria, Incorporated, both praying for the appointment of a receiver of the properties under consideration.

The bill in the Valdes suit (referred to in the Court below as suit No. 564) set forth the November 2, 1907, contract of conditional sale, the default of the vendee thereunder, and the bringing of an action on the law side of the court for obtaining possession of the premises in accordance with the November 2, 1907, contract, and prayed for the appointment of a receiver to take charge of the property pending the decision of the action at law and for "such other relief in the premises as the nature and circumstances of the case may require."

The bill in the Central Altamaria suit (referred to in the Court below as suit No. 565) alleged concerning the instruments of October 28 and November 2, 1907, that these did not constitute Valdes the owner of the properties therein mentioned, but that they were executed in order to carry into effect an alleged arrangement pursuant to which the advances made by Valdes to the corporation at that time were to constitute a "refaccion" debt. In addition, this bill, among other things, contained charges of alleged mismanagement by Valdes as president of the corporation, without, however, setting forth the amount of loss, if any, claimed to have been caused by reason thereof.

Upon the filing of the above two bills the Court below appointed a temporary receiver and custodian, and later consolidated the two causes by an order dated July 20, 1908, and appointed a permanent receiver of the leasehold and other properties involved. This permanent receiver entered into possession and undertook the management of the Central, issuing various receiver's certificates in connection with the carrying on of its business during the sugar grinding season following his appointment.

From July, 1908, to July, 1909, no proceedings were taken by either of the parties, or by the Court below, in reference to the above bills or the demurrers which had been interposed thereto.

Meanwhile the receivership had resulted in a loss of about \$17,000, represented in part by outstanding receiver's certificates (Record, pp. 28, 116-118).

The situation in July, 1909, when the next steps in the litigation were taken, is best stated in the language of the Court below, contained in a memorandum filed July 21, 1909:

"The property is now and has been for about a year last past in the hands of a receiver of this Court. The receivership, in so far as keeping the property as a going concern without running in debt, has been an unfortunate failure. It has run in debt during the year's receivership, all told, about \$17,000, and more than half that amount is represented by outstanding receivers' certificates.

"This deplorable condition resulted in the Court calling all counsel interested before it at Mayaguez on the evening of the 17th of July instant, when, after some consultation between the Court and the several counsel, it was announced from the bench that the Court would soon take some action with a view to settling the many conflicting rights regarding the property" (Record, p. 28).

The Court's anxiety to dispose of the litigation is also shown by the memorandum filed July 28, 1909 (Record, p. 88).

In order to meet the alarming situation presented by reason of the extraordinary loss arising from the operations of the receivership and to forestall the probability of similar losses during the next grinding season, a speedy determination of the rights of the parties became necessary so that complete title to the properties involved might be vested as soon as possible in some one person or corporation. Accordingly, and *without any objection* being raised thereto by the parties, the Court below on July 21, 1909, entered the following order:

"The Court having recently heretofore held a joint conference with all counsel in all of the above entitled cases involving the property and rights in and to the property known as the Central Altamaria, on this day sends a memorandum to the files (which counsel was directed to examine) setting forth its views in the premises, and its intention to bring the litigation, receivership, etc., regarding this property to an end and of causing immediate issue to be raised on the pleadings for that purpose, and in accordance with said memorandum, it is ordered:

* * * * *

"THAT THE DEMURRER IN SUITS 564 AND 565 AS CONSOLIDATED BE, AND THEY HEREBY ARE OVERRULED, AND RESPONDENTS IN EACH CASE ARE REQUIRED TO ANSWER ON OR BEFORE MONDAY THE 26TH INSTANT, SO THAT A TRIAL OF THE ISSUE THUS RAISED CAN BE BEGUN UPON THE FOLLOWING DAY BEFORE THE COURT WITHOUT THE INTERVENTION OF AN EXAMINER OR MASTER. PROVIDED THAT NOTHING IN THIS ORDER SHALL PREVENT THE PARTIES IN EITHER CASE, AS MAY BE PROPER, FROM IMMEDIATELY AMENDING THEIR BILLS OR FROM FILING A CROSS-BILL IN ADDITION TO AN ANSWER, BUT IN SUCH CASE THE LATTER SHALL BE CONSIDERED AS DENIED AND ISSUE MADE AS MAY BE PROPER SO THAT THE TRIAL MAY PROCEED NOTWITHSTANDING" (Record, pp. 27, 28).

Availing itself of the provisions of this order, Central Altamaria, Incorporated, thereupon, on

July 22, 1909, filed its amended bill of complaint in suit No. 565 (Record, pp. 33-40), and on July 26, filed its answer in suit No. 564 (Record, pp. 40-62).

Valdes thereupon, on July 27, 1909, filed his answer and cross-bill to the company's amended bill of complaint in No. 565 (Record, pp. 70-82), and on July 28, 1909, filed his replication to the company's answer in No. 564 (Record, p. 90).

Nevers & Callaghan, who were judgment creditors of Central Altagracia, Incorporated, were made parties defendant, and filed their answer and cross-bill to the Central Altagracia bill and to the bill of complaint and cross-bill of Valdes (Record, pp. 64, 65-69), the position taken by them in such answers and cross bill in reference to the contracts of October 28 and November 2, 1907, being along the same lines as the position taken by Central Altagracia, Incorporated, in its pleadings.

Valdes thereupon filed his replication to the answer of Nevers & Callaghan (Record, p. 91), and his answer to the cross bill of Nevers & Callaghan (Record, pp. 87-88).

After availing itself of the provisions of the order of July 21, 1909, by filing an amended bill in No. 565, and an answer to No. 564, as above stated, Central Altagracia, Incorporated, apparently determined upon an attempt to obstruct as far as possible the program theretofore acquiesced in by it and to delay the trial of the consolidated causes. Accordingly, on July 27, 1909, the date when pursuant to the order of July 21, 1909, the trial was to commence, counsel for Central Altagracia, Incorporated, filed an affidavit (Record, pp. 82-85), setting forth an alleged necessity for taking depositions of certain persons in Philadelphia and New York, and requested that the trial be postponed to give it an opportunity to take the depositions of such witnesses (Record, p. 86).

The Court below denied this application for an adjournment and stated to counsel for Central Altagracia, Incorporated,

"that the matter has been pending for more than a year and that counsel had full notice

of the Court's intention to press the matter to issue and trial, and that it is not disposed to delay matters at this time, when the admissions of the pleadings are so broad that the proofs available here in Porto Rico are probably sufficient, and that the amended complaint already on file in suit No. 565 and the answer thereto, and the answer recently filed in suit No. 564, as well as the cross-bill also recently filed in suit No. 565, make as many allegations and admission as that the real issue between the parties can be plainly seen, and that in the opinion of the Court enough proof is available here in Porto Rico, and complainant in suit No. 565, if it sees fit, may file exceptions to the answer and an answer to the cross-bill, but that in the opinion of the Court, the same would be mere formalities, as the opposite pleadings of each of the parties in said causes reduces the issues almost entirely to questions of law, and hence the Court requires that the causes proceed and gives the said complainant in suit No. 565 until tomorrow morning within which to file his exceptions to the answer and his answer to the cross-bill in said suit, if he shall choose so to do, and informs him that he may consider the same as filed and file the same in writing at any time before the end of the trial, if he so desires, and that if it shall appear after complainant makes its case or even at any time before the close of the case, that counsel's statement is well founded, that the absence of the witnesses named does in fact prejudice his client, the Court will hear his application to have such depositions taken" (Record, pp. 86-87).

Before the commencement of the trial on July 28, 1909, counsel for Central Altamaria, Incorporated, objected to the taking of any evidence in any of the causes at that time, alleging as the ground of his objection that the causes were not at issue or in condition for the taking of evidence (Record, p. 89).

The Court thereupon overruled this objection and proceeded with the trial, hearing the evidence

offered by Valdes and Nevers & Callaghan and announcing several times to counsel for Central Altagracia, Incorporated, who, although not participating in the trial, were present and examined as witnesses on behalf of Nevers & Callaghan that Central Altagracia, Incorporated, had the right, if it chose, to cross-examine the witnesses or to make any proper proofs in the case at any time before the closing of the same, but that the Court would not further delay the taking of the testimony, as it felt that the issues were sufficiently before it and the proofs necessary were easily obtainable by all parties (Record, pp. 93, 94).

The proceedings above narrated leading up to the trial of the cause are also set forth in the Court's opinion on the merits filed on September 25, 1909 (Record, pp. 107-109), where the Court adds:

"As we see it, the effort of Central Altagracia through their attorneys by their action in refusing to take part in the trial on the merits, is to secure delay in the proceedings. We cannot imagine any other object, because from the developments at the trial, it is manifest that every fact that can be known about the matter is well in evidence, and that nothing remains that necessitates the taking of the depositions of any of the witnesses in New York or elsewhere, mentioned in the affidavit of July 28th, of Judge Pettingill, solicitor for the Altagracia, which he filed as stated at the time he endeavored to avoid proceeding with the trial on the merits."

The decision of the Court below on the merits was substantially along the lines contended for in the bill (Record, p. 8) and amended bill (Record, p. 38) of Central Altagracia, Incorporated, as well as the pleadings of Nevers & Callaghan—that the transaction evidenced by the instruments of October 28th and November 2, 1907, constituted a loan from Valdes to the company and not a sale—and pro-

vided for the foreclosure of the lien so found in favor of Valdes.

Accordingly, the final decree, entered October 14, 1909, directed a sale and provided the method of distribution of the proceeds.

Upon the sale made pursuant to the final decree below, Valdes became the purchaser and was placed in possession of the leasehold and other properties theretofore covered by the receivership (Record, p. 137).

A controversy between Valdes and Nevers & Callaghan as to their respective priority to share in such proceeds of sale is before this Court in the case of Ramon Valdes, appellant, *vs.* Central Altagracia, Incorporated, *et al.*, October Term 1911, No. 193.

The errors assigned by Central Altagracia, Incorporated, in appealing from the decree below of October 14, 1909, are set forth on pages 122 and 123 of the Record. They all relate to matters of practice and procedure and are as follows:

“ I.

“ The Court erred in overruling the demur-
rer of Central Altagracia, Incorporated, to bill
of complaint in cause No. 564 of aforesaid
consolidated causes of action.

“ II.

“ The Court erred in ordering answer filed
by Central Altagracia, Incorporated, to bill of
complaint, on or before the 26th day of July,
1909.

“ III.

“ The Court erred in ordering Central Altagracia, Incorporated, to proceed to trial in the aforesaid consolidated causes of action without allowing said Central Altagracia, Incorporated, an opportunity to except to answer of Ramon Valdes, or plead to the said Valdes' cross-bill, in accordance with the Equity rules.

“ IV.

“ The Court erred in ordering Central Altagracia, Incorporated, to proceed to trial in the aforesaid consolidated causes of action with-

out allowing said Central Altagracia, Incorporated, opportunity to except to answer of Nevers & Callaghan, or plead to said Nevers & Callaghan's cross-bill, in accordance with the rules of Equity.

“ V.

“ The Court erred in not permitting and allowing Central Altagracia, Incorporated, time to sue out a commission to take the depositions of the several witnesses named in the petition and affidavit of N. B. K. Pettingill, Treasurer of the said Central Altagracia, Incorporated, sworn out on the 27th day of July, 1909.

“ VI.

“ The Court erred in proceeding to a trial and hearing in the aforesaid consolidated causes before the issues were properly settled and without the presence and intervention of said Central Altagracia, Incorporated.

“ VII.

“ The Court erred in overruling exceptions of Central Altagracia, Incorporated, to the answer of Ramon Valdes in suit No. 565, on September 7th, 1909.

“ VIII.

“ That the Court erred in not following the equity rules, promulgated by the Supreme Court of the United States, in the aforesaid consolidated causes of actions Nos. 564 and 565.

“ IX.

“ That the Court erred in entering a final decree herein in favor of the said Ramon Valdes and Nevers & Callaghan and against these defendants” (Record, pp. 122-123).

It will be observed that the assignment of errors set forth on pages 11 - 13 of the brief of Central Altogracia, Incorporated, in this Court, while purporting to be a substantial re-assignment of the errors assigned in the Court below, “with some omissions and some amendments in the way of more particularity,” covers, in fact, a number of matters not included in the assignment of errors upon which the appeal was taken.

No mention whatever is made in the Court below of the matters referred to in items VIII to XV of the assignment of errors contained in the brief of Central Altagracia, Incorporated, in this Court.

Items I to VII, which are the ones discussed in Point I of said brief, are the only ones which correspond more or less closely with the assignment of errors in the Court below.

While it is submitted that upon the whole record in this case the alleged errors which were not assigned in the Court below should pursuant to the rule be disregarded upon this appeal, we will answer in this brief the various contentions of the Central Altagracia, Incorporated, substantially in the order in which they are presented in its brief.

A R G U M E N T .

POINT I.

The Central Altagracia, Incorporated, was not denied any rights under the equity rules or otherwise in connection with the making up of the issues and the trial of the cause.

Central Altagracia, Incorporated, in Point I of its brief, discussing its first seven assignments of error, contends that the Court below erred:

- (a) In not allowing certain periods claimed to be provided by the equity rules for bringing the cause to an issue;
- (b) In requiring Central Altagracia, Incorporated, to produce its evidence orally, in open court, without the intervention of a master;
- (c) In not allowing a period of three months for the taking of evidence, and

(d) In denying the request for time to sue out a commission to take the testimony of witnesses named in the affidavit filed July 27th, 1909.

None of the foregoing contentions are tenable.

A. Having availed itself of the provisions of the order of July 21st, 1909 (Record, p. 28), by filing an answer and an amended bill of complaint, Central Altagracia cannot complain of the conditions upon which said order granted the permission to file such additional pleadings.

After a demurrer had been interposed in the Central Altagracia suit, the latter had no right to amend its bill of complaint except with the permission of the Court, nor could Central Altagracia, Incorporated, except upon an order of the Court, file an answer in the Valdes suit after its demurrer therein had been overruled.

The conditions imposed by the Court in providing for the filing of such answer and amended bill of complaint are set forth in the order of July 21, 1909, as follows:

“That the Demurrer in suits 564 and 565 as Consolidated be, and they hereby are overruled, and respondents in each case are required to answer on or before Monday, the 26th Instant, so that a Trial of the issue thus raised can be begun upon the following day before the Court without the intervention of an Examiner or Master. Provided that nothing in this order shall prevent the parties in either case, as may be proper, from immediately amending their Bills or from filing a cross-bill in addition to an Answer, but in such case the latter shall be considered as denied and issue made as may be proper, so that the trial may proceed notwithstanding.”

By accepting the permission so granted, Central Altagracia, Incorporated, acquiesced in the terms upon which it is granted—viz.: That any cross-bill to its amended bill of complaint should be considered

as denied, and that the cause should be at issue, and that the trial of the cause by the Court, without the intervention of an Examiner or Master, should commence July 27th, 1909.

It is elementary that a litigant may not question an order, the parts of which are mutually interdependent, after he has acquiesced in its terms by taking advantage of the provisions in his favor.

The acceptance by Central Altamagracia, Incorporated, of the permission granted to it for filing an answer and amending its complaint binds it absolutely to the conditions imposed and renders immaterial any questions as to the propriety of such conditions and as to the power of a court of equity ordinarily to cut down or enlarge the various periods prescribed by the equity rules.

If Central Altamagracia, Incorporated, claimed that the conditions imposed by the order of July 21, 1909, were unauthorized or improper, it should have rejected the entire order and stood upon what it considered its rights without the order. Having, however, acquiesced in the order by taking advantage of its provisions and by failure to make any objection thereto at any time prior to July 27, 1909, the day set for the trial, Central Altamagracia, Incorporated, cannot thereafter complain of the conditions imposed.

"The party asking to amend may reject the permission, if connected with terms which he does not wish to accept; but he cannot accept a conditional order, so far as it is for his benefit, and reject the rest. * * * The plaintiffs asked to amend. It must be assumed that the amendment was material. They had no legal right to have the amendment allowed. The Referee in answer to their application, said, in substance, that he would grant the motion on condition that they would consent that the defendants might withdraw their answer, and demur. The plaintiffs thereupon amended their complaint, thereby assenting to the condition, and the defendants served a demurrer; and now the plaintiffs seek to set aside the order of the

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Referee, so far as it allowed the defendants to demur, as beyond his power. We think the order was within his power, and also that the plaintiffs have by their conduct precluded themselves from questioning it."

Smith vs. Rathbun, 75 N. Y., 122, at 126-127.

"One who accepts the benefits of a decree or judgment is thereby estopped from reviewing it or from escaping from its burdens."

Hill v. Phelps, 101 Fed. Rep., 650, 654.

Chase v. Driver, 92 Fed. Rep., 780, 786.

"In allowing amendments, the Court has a very wide discretion, and may reasonably, and should, permit them to be filed upon such reasonable conditions as may serve the ends of justice and *not delay the trial of the case.*"

Burkholder v. Farmers Bank, 23 Ky. Law Rep., 2449.

It is common practice to permit amendments on condition that the filing thereof shall not delay the trial of the case.

McClure v. Bigstaff, 18 Ky. Law Rep., 601.

Burgin v. Giberson, 23 N. J. Eq., 403.

See also:

Supreme Lodge K. of H. v. Davis, 26 Colo., 252.

B. Equity Rule 67 authorizes an order requiring parties to adduce their evidence orally in open court, and the three months' provision of Rule 69 does not apply in case of such oral hearing.

Central Altagracia, Incorporated, in V and VI of the assignment of errors, as contained in its brief, claims that the Court erred:

(a) In refusing to allow the Central a period of three months within which to take its evidence as provided in Equity Rule 69, and

(b) In requiring the Central to adduce and present its evidence orally before the Court without the intervention of an Examiner or Master against its protest and contrary to provisions of Equity Rule 67.

Neither of these claims is set forth in the assignment of errors which constitutes a part of the Record nor was either of these points put forward in the Court below as an objection to proceeding with the trial. Counsel's objection in the Court below was entirely based upon his contention that Central Altagracia, Incorporated, was entitled to further time within which to except to the Valdes answer and to plead or answer to his cross-bill and that the causes were not at issue until these steps had been taken. Neither of the contentions embodied in V and VI of the assignment of errors, now urged be Central Altagracia, Incorporated, was in any way called to the attention of the Court below.

Accordingly the answer to these two contentions is:

1. That not having been made in a court below, they cannot be urged for the first time on appeal as ground for reversal of the decree, and

2. That, as shown in A above, acceptance of the order of July 21st, 1909, was an acquiescence in an immediate trial in open court as required by said order.

Independently, however, of these considerations it is submitted that subdivision (9) of Equity Rule 67 expressly authorizes the Court in spite of objection to order the trial in open court upon evidence there to be given orally, and that the three months' period mentioned in Rule 69 does not apply in such case.

I. Paragraph (9) of Rule 67 is as follows:

"Upon due notice given as prescribed by previous order, the Court may, at its discretion, permit the whole or any specific part of the evidence to be adduced orally in open court on final hearing."

To be sure the Circuit Court of Appeals for the Fourth Circuit has in the case of *Hyams vs. Federal Coal & Coke Co.*, 152 Fed. Rep., 970, referred to in the opposing brief, held that the above provision of the rule did not authorize the Court to require an unwilling party to adduce his evidence orally in open court.

This decision, however, is questioned in the very circuit in which it was made (see 180 Fed. Rep., at p. 329), is opposed to the practice in other circuits, notably in the Southern District of New York, and is, it is submitted, an obvious misinterpretation of the intent and meaning of the provision under consideration.

The history of Equity Rule 67 is discussed by this Court in *Blease v. Garlington*, 92 U. S., 1.

The Judiciary Act of 1789 (1 Stat., 88, Sec. 30) provided that the mode of proof by oral testimony and examination of witnesses in open court should be the same in all courts of the United States as well in the trial of causes in equity as of actions at common law.

Under the authority of the act of May 8th, 1792 (1 Stat., 276, Sec. 2), this Court at its February Term, 1822, adopted certain rules of practice for the courts of equity of the United States. 7 Wheat. V. Rules 25, 26 and 28 related to the taking of testimony by depositions, and the examination of witnesses before a master or examiner; but by Rule 28 it was expressly provided that nothing therein contained should "prevent the examination of witnesses *viva voce* when produced in open court."

These rules continued in force until the January Term, 1842, when they were superseded by others then promulgated, of which 67, 68, 69 and 78 related to the mode of taking testimony, but made no reference to the examination of witnesses in open court, further than to provide, at the end of Rule 78, that nothing therein contained should "prevent the examination of witnesses *viva voce* when produced in open court, if the Court shall, in its discretion, deem it advisable."

Afterwards (in August, 1842) Congress authorized this Court to prescribe and regulate the mode of taking and obtaining evidence in equity cases (5 Stat., 518, Sect. 6). While these rules remained in force substantially as originally adopted, and before any direct action of the Court under the special authority of this act of Congress, the case of *Sickles v. Gloucester Co.*, 3 Wall Jr., 186, came before Mr. Justice Grier on the circuit; and he there held, that, notwithstanding, the rules, witnesses might still be examined in open court. It was his opinion that the act of 1789 guaranteed to suitors the right to have their witnesses so examined, if they desired it; that Rule 67 did not affect or annul the act of Congress or the policy established by it; and that a party had therefore the right to demand an examination of witnesses within the jurisdiction of the Court *ore tenus*, according to the principles of the common law, either by having them produced in court, or by having leave to cross-examine them, face to face, before the examiner.

Thereafter at the December Term, 1861, of this Court, Rule 67 was amended so as to provide for the oral examination of witnesses before an examiner in substantially in the manner now set forth in sub-division (2) of the present rule.

Later the Act of 1789 in relation to the oral examination of witnesses in open court was repealed by Section 862 of the Revised Statutes, which conferred upon the Supreme Court the right to prescribe by rule the mode of proof in equity cases.

This was the situation when the case of *Blease vs. Garlington* came before this Court for decision at the October Term, 1875, and this Court then held that while since the Revised Statutes, courts of equity were not required to take testimony orally in open court, they might nevertheless under the operation of the then existing rules do so. The Court said:

“ While therefore we do not say that even since the Revised Statutes, the Circuit Courts

may not in their discretion under the operation of the rules permit the examination of witnesses orally in open court upon the hearing of cases in equity, we do say that now they are not by law required to do so" (*Blease v. Garlington*, 92 U. S., 1, at p. 7).

The foregoing being the language of this Court prior to the adoption on May 15th, 1893, of paragraph (9) of Rule 67, the right of an equity court, in its discretion, to conduct an oral trial is even less open to question since the adoption of said paragraph (9) providing as follows:

"Upon due notice given as prescribed in previous order, the court may, at its discretion, permit the whole or any specific part of the evidence to be adduced orally in open court on final hearing."

The obvious meaning of this provision is that on the application of either party and upon due notice, the Court may in its discretion have the evidence in the case taken orally in open court.

If, as is contended, the consent of both parties was to be required for such procedure, it would have been easy and simple to have said that the Court might with the consent of the parties take the whole or any part of the testimony in this manner. The requirements that due notice be given and that a previous order of Court be made repel the idea of mutual consent and clearly indicate that an adverse proceeding was in contemplation.

Why provide, as the rule does, that the Court may in its discretion permit the WHOLE of the evidence to be taken orally in open court upon due notice if as is contended the intention was that the Court should not have this power without the consent of both parties?

It stands to reason that the Court may permit to be done what both parties agree shall be done and no rule of court was necessary to announce this self-evident proposition.

If, therefore, the rule is to have any meaning at all, it must be that on the application of either party and upon due notice to the other, the Court may in its discretion direct the case to be tried before it upon oral testimony adduced in open court whether with or without the consent of the opposing side.

This is the interpretation which has been placed upon this rule in the Southern District of New York as is shown by the following rule of the U. S. District Court for said District, adopted December 7th, 1911:

“EQUITY RULES.

4. Trials in Open Court.

If any party to a suit in Equity desires a trial in open court upon evidence there to be given orally, he shall move for an order directing that mode of trial upon any general motion day; but if such proposed order be consented to it may be entered at any time without notice."

II. The provisions of Equity Rule 69, allowing three months for the taking of testimony, obviously can apply only where the testimony is taken by deposition pursuant to paragraph (1) of Rule 67, and perhaps also where it is taken before an examiner pursuant to paragraph (2) of Rule 67, but it certainly cannot apply in cases where the evidence pursuant to order made under paragraph (9) of Rule 67 is heard orally in open court.

The reference in Rule 69 to the return of the commissions and depositions, as well as the fact that the adoption of this rule on March 2, 1842, was simultaneous with the adoption of paragraph (1) of Rule 67, long preceding, therefore, the incorporation in Rule 67 of the provisions for an oral hearing in open court, clearly indicate that Rule 69 does not and was not intended to apply in cases of such oral hearings.

The provision that "three months and no more shall be allowed for the taking of testimony" cer-

tainly could not mean that the trial if taking place in open court must necessarily last a full three months after the cause is at issue; nor could it mean in direct violation of the very words of the rule that the trial, and therefore the taking of the testimony, shall not begin until the expiration of such three months.

It may be conceded for the purpose of this argument that, in the absence of any order directing a trial in open court, a final decree cannot be entered until the expiration of three months after the cause is at issue and that is all that was held in *Jewell vs. State Life Insurance Company*, 176 Fed. Rep., 64, referred to in brief of Central Altagracia, Incorporated.

Even this concession is contrary to the former practice in the Circuit Court for the Southern District of New York (see Rule 109) and the present practice of the District Court in said District (see Equity Rule 3), pursuant to which a cause may be set down for hearing on the pleadings if no proceedings for the examination of witnesses are taken within *thirty* days.

No matter, however, what the effect of Rule 69 may be in other cases, it certainly cannot apply in cases where the trial is directed to take place on oral evidence to be adduced in open Court.

It is submitted therefore that even if the question were open on this appeal and even in the absence of a waiver by Central Altagracia, Incorporated, as above shown, of any rights in this respect, there is no merit in V and VI of the assignment of errors set forth in the brief of Central Altagracia, Incorporated.

C. The order of July 21, 1909, as well as the refusal of the Court to accede to a postponement of the trial pending the taking of depositions by Central Altagracia, Incorporated, constituted a proper exercise of judicial discretion.

The continuance of the trial on account of the absence of the testimony of material witnesses has

always been held to be in the discretion of the trial Court.

Barrow v. Hill, 13 How., 54.
Cox v. Hart, 145 U. S., 376.
Isaacs v. U. S., 159 U. S., 487.
Texas & P. Ry. Co. v. Nelson, 50 Fed., 814.
Drexel v. True, 74 Fed. Rep., 12.

The exercise of such discretion is not reviewable on appeal and certainly not where, as in the case at bar, the appellant has acquiesced by taking advantage of the portion of the discretionary order which was in its favor.

Moreover the record shows that the action of the Court below in respect to these discretionary matters was wise and proper.

In July, 1909, the receivership had been in force for a whole year and no further proceedings had been taken in the consolidated suits pending before the Court since July of the preceding year.

The concluding paragraph of the order of July 2nd, 1908, appointing the receiver (Record, p. 22) upon which opposing counsel relies provided that:

"Any delay on the part of any of the parties hereto or of the stockholders of said Central Altagracia, in asserting by suit supposed rights, or liabilities, as between themselves or against one another during the pendency of this receivership shall not be considered * * * in the nature of laches in the assertion of such rights * * *"

This paragraph did not, as suggested, invite a postponement of further proceedings in the then pending consolidated cause. Such proceedings obviously would not interfere with the receivership, and, in the nature of things, could not be postponed "during the pendency of the receivership," since the conclusion of the receivership depended upon the determination of these very questions. The invitation, if it may be so called, which this paragraph

extended was merely to delay the assertion of rights by *other* suits or proceedings.

The operation of the property by the Receiver during this interval of one year resulted, as has been shown, in the loss of about \$17,000 (Record, p. 28), and in view of this and the likelihood of a similar loss during the next grinding season, it is easy to understand the anxiety of the Court below and its desire to bring about a termination of the receivership, and, by disposing of the pending litigation, to get complete title to the properties in some one person or corporation (Record, p. 31).

There was no absolute denial of the application of Central Altagracia, Incorporated, to take the depositions of the witnesses mentioned in its affidavit of June 27th, 1909, and the Court expressly offered to entertain such application if, at any time before the close of the trial, the necessity for the testimony of such witnesses should appear (Record, pp. 86-87).

The absence of good faith on the part of Central Altagracia, Incorporated, in attempting to delay the proceedings by requiring time to file exceptions to the Valdes' answer and to take the depositions of witnesses is shown by the frivolous character of the exceptions afterwards filed (Record, pp. 99-100) and by the fact that, as shown by the result of the trial, there was no necessity for the depositions of the witnesses mentioned in the July 27th affidavit.

The facts which, according to this affidavit, it was intended to prove by these witnesses, were largely either admitted by the pleadings or matters on which the Court, ultimately, without the testimony of these witnesses, found in favor of Central Altagracia, Incorporated.

It was not denied that purchases of machinery were made by Valdes in his own name and the Court found, without the testimony of the witnesses referred to, that the transaction between Valdes and the corporation was a loan and not a sale, and that as to the claims against the corporation purchased by Valdes from third parties, he was entitled to en-

force the same only to the amount paid by him therefor.

It is improbable that the testimony of outsiders could have added anything to the testimony of the parties themselves on the question of usury, which is the one to which the appellant's brief specifically refers (p~~26~~), nor that any testimony of persons then in the United States, as to alleged mismanagement of the property by Valdes, would have been more cogent than the testimony on this point available in Porto Rico. Had the necessity for additional testimony developed during the course of the trial appellant could have availed itself of the offer of the Court to then grant the necessary time for the taking of depositions.

The record shows a desire on the part of the Court below to afford Central Altagracia, Incorporated, every reasonable opportunity to offer proof in support of its allegations should the corporation desire in good faith to do so. Not having attempted to avail itself of the testimony at its command, appellant does not show any prejudice to it from the failure to postpone the trial pending the taking of depositions.

It may be surmised that in taking the position which it did in the Court below and refusing to participate in the trial, Central Altagracia, Incorporated, was influenced largely by the consideration that as against Valdes the interests of Nevers & Callaghan, who did participate in the trial, were in many respects similar to those of the corporation.

The officers and counsel of the corporation were introduced as witnesses by Nevers & Callaghan, and through the efforts of Nevers & Callaghan, and their participation in the trial below, many, if not all the claims and contentions of the corporation, were actually presented and litigated notwithstanding the refusal of counsel of Centr' Altagracia, Incorporated, to participate directly in the trial.

POINT II.

Central Altagracia, Incorporated, cannot complain of the decision below, on the ground that it declared the transaction between it and Valdes an equitable mortgage in favor of Valdes rather than a sale by it to Valdes with a subsequent conditional sale from Valdes to the corporation, or on the ground that it ordered a sale of the property, instead of placing Valdes in possession thereof.

Central Altagracia, Incorporated, in Points II and IV of its brief, discusses a question sought to be raised by VIII and X of the assignment of errors contained in said brief, claiming that the decree below should not have declared the existence of an equitable mortgage in favor of Valdes, nor the foreclosure thereof by sale.

As has already been pointed out, the question raised by these and the subsequent assignments is not covered by the assignment of errors filed in the Court below and might therefore be disregarded on the appeal.

In any event, however, Central Altagracia, Incorporated, cannot be heard to complain on this appeal, because the decree below was more favorable to Central Altagracia, Incorporated, than the contentions of Valdes, if sustained, would have warranted.

The execution of the instruments of October 28th and November 2nd, 1907, was admitted by all parties to the litigation. Under the general prayer contained in both the Valdes Bill and cross bill (Record pp. 5 and 81) for such other relief as equity or the

nature or circumstances of the case may require, it was proper for the Court to grant Valdes such relief as it considered him entitled to upon the facts and law in the case although upon a different theory of law than that upon which the said prayers for relief or the contentions of Valdes on the trial were based.

Lockhart v. Leeds, 195 U. S., 427.

Tayloe v. Merchants Fire Ins. Co., 9 How., 390.

Patrick v. Isenhart, 20 Fed. Rep., 339.

London & San Francisco Bank v. Dexter Horton & Co., 126 Fed. Rep., 593.

Appellant, Central Altagracia, Incorporated, cannot complain because such relief was less than what Valdes claimed to be entitled to.

POINT III.

The Court below had the right to order the sale of all the property included in the receivership, and Central Altagracia, Incorporated, cannot complain on this appeal of the sale of property claimed not to have been covered by the contracts of October 28 and November 2, 1907.

In IX and XI of the assignments of error contained in appellant's brief, Central Altagracia, Incorporated, claims that the Court below erred in decreeing that the so-called equitable mortgage was

a lien upon property not described in the contracts of October 28 and November 2, 1907, and in decreeing the sale of any property not so included. These contentions are thereupon discussed in Points III and IV of the Central Altagracia, Incorporated, brief.

The question presented is certainly a narrow one for the appellant to raise for the first time in the appellate court, and even if appellant's contention in this respect were sound, no such plain error is shown as would warrant this Court in noticing the same in the absence of any assignment or specification thereof in the court below.

The contention seems to be, in reference to the description contained in the decree, that the property mentioned in the third paragraph (Record, p. 115) was not included in the contracts of October 28 and November 2, 1907. These, it will be remembered, covered the leasehold as well as "the machinery, utensils *and appurtenances*." For all the record shows, the items mentioned in the decree in paragraph 3 of the description are nothing more than an enumeration of the appurtenances which are covered by the contracts. If such was not the case Central Altagracia, Incorporated, should have brought the facts to the attention of the Court below so that the record might have shown clearly the discrepancy which is now claimed to exist between the Court's opinion and the decree entered thereon.

In the absence of any clear showing on this point it is proper for this Court to assume that the contracts of October 28 and November 2, 1907, included all the items enumerated in the decree and that Central Altagracia, Incorporated, had no personal or real property other than that included in the contracts.

Assuming, however, for the purpose of this argument, that the decree did order the sale of property other than that included in the above contracts,

there could nevertheless be no question as to the power and right of the Court to make such order. Certainly the receivership which was ordered by the Court below in accordance with the prayers of the bills of both Valdes and the corporation covered any and all property, whether specifically described in the contracts or not, and the Receiver's certificates were expressly made a first lien thereon. In order to provide for the payment of such certificates a sale of the whole or any particular portion of such properties could be ordered.

No harm was done to the corporation when the Court, instead of ordering such separate sale for the benefit of the holders of Receiver's certificates, provided for the sale of all the properties at one time in order to provide for the payment of other liens as well as the Receiver's certificates.

The Receiver's indebtedness, amounting to more than \$17,000, has actually been paid out of the proceeds of the sale, and in the absence of any evidence that the property which it is claimed was not included in the Valdes contracts exceeded such amount, clearly it cannot be claimed that such sale was unauthorized or that the corporation suffered in any respect.

The total purchase price bid for all the property sold pursuant to the decree below was less than the sum total of the lien adjudged in favor of Valdes and the liens declared to be prior thereto.

The corporation had no rights in the property until all these liens were satisfied, and is not concerned in any disputes between the different lienors as to the priority of their respective claims.

Jerome vs. McCarter, 94 U. S., 734, 738.

Even the assumed unauthorized sale of property not covered by the contracts of October 28 and November 2, 1907, would not be ground for the rever-

sal of the entire decree. Upon a reversal of so much of the decree as directed the sale of the portion claimed to be improperly sold, the respective rights of the parties could readily be adjusted in the Court below, probably without the necessity of a resale.

Such limited reversals have taken place in cases where the decree included property for the sale of which there was absolutely no authority, and in one of such cases the costs of the appeal were imposed upon the appellant on account of his failure to call the attention of the Court below to the alleged error so as to render the appeal unnecessary.

Helm v. Weaver, 69 Tex., 143.

Peel vs. Gary, 54 Tex., 253.

Domestic Building Assn. v. Nelson, 172 Ill., 386.

In the case at bar, however, as has been pointed out, the Court, in view of the receivership and the lien of the outstanding certificates, had power to sell all the property actually sold, and appellant does not even show clearly that any of the property sold was not included in the contracts which were adjudged to be an equitable mortgage in favor of Valdes.

Appellant's ninth and eleventh assignments of error are an afterthought and are without foundation.

POINT IV.

The provisions of the decree below purporting to marshal and distribute all the assets of the corporation are not subject to attack upon this appeal.

The properties in question were sold under the decree for \$100,000 (Record, pp. 135-136). This was

less than the sum total of the liens declared and adjudged by the decree. There was no surplus, therefore, in which either the corporation or its general creditors were interested, and no question can arise, therefore, as to the correctness of the provisions referring to distribution among such creditors.

POINT V.

Appellant's assignments of error XIII, XIV and XV are equally untenable.

Without any assignment in that respect in the Court below, and without any testimony in this regard on which to base the contention, Central Altagracia, Incorporated, now claims in its Point VI that there had been no default in its payments due to Valdes.

The Court below, on the other hand, found as a fact that there had been such a default, and there is nothing in the record on appeal upon which such finding can be reviewed.

The denial of the motion of Central Altagracia, Incorporated, made on November 5, 1909, for the modification of the decree of October 14, 1909, is obviously not reviewable upon the present appeal previously taken from such decree.

Moreover, the declaration and enforcement of any constructive trust as prayed for could be made, if at all, only after a trial in a suit brought for that purpose; and such relief certainly could not be granted upon a motion in a litigation which happens to be pending between the parties in respect to a different subject matter.

POINT VI.

The decree below should be affirmed, except in so far as it directs that out of the proceeds of sale the Nevers & Callaghan judgment should be paid in priority to the Valdes claims and in so far as it requires Valdes as purchaser at the sale to pay the amount of this judgment, in which last-mentioned respects it should be reversed.

As has been pointed out, the decree below, instead of placing Valdes in possession of the properties to which, under the instruments of October 28 and November 2, 1907, he claims to be entitled, declared the transaction between Valdes and the corporation to be an equitable mortgage in favor of Valdes and provided for the foreclosure thereof. In doing so the Court below gave to the above instruments practically the effect contended for by Central Altamericana, Incorporated, and it therefore has no reason to complain in this respect.

Valdes having become the purchaser of the properties at the foreclosure sale and being now in possession thereof, the injury to Valdes from the decree below consisted mainly in his being obliged to pay in cash the amount of the Nevers & Callaghan judgment. The question as to the correctness of the decree in this respect is raised in No. 193. If the appeal of Central Altamericana, Incorporated, in No. 196, is decided adversely to the appellant, Central Altamericana, Incorporated, is in no way interested in the controversies arising in No. 193 between Valdes and Nevers & Callaghan as to the question of priority between them.

The decision of this Court in *Cabrera vs. American Colonial Bank*, 214 U. S., 224, which is referred to in brief of appellant in No. 196, is not in

point. While it has often been held, as in the *Cabrera* case, that a court of equity will treat a deed, absolute in form, as a mortgage when it is executed as security for a loan of money, the protection of the debtor, which is the basis of decisions of that character, does not require a similar holding in the case at bar, where the deed from the corporation to Valdes was immediately followed by a conditional sale of the property by Valdes to the corporation.

As between the corporation and Valdes, the result under the circumstances of the case, is substantially the same whether the transaction be regarded as a mortgage in favor of Valdes or as a deed to Valdes with a conditional sale by him to the corporation.

There is no reason, however, why, so far as concerns the claims of Nevers & Callaghan under their execution, the instruments between Valdes and the corporation should not be given effect according to their terms.

Nor is there any reason why Nevers & Callaghan, who were, and were intended to be, unsecured creditors, should be preferred in the payment of their claim over Valdes, whose advances the corporation concedes were intended to be secured.

Even on the assumption that the doctrine enunciated in the *Cabrera* case is applicable in the case at bar, and on the assumption that the transaction between Valdes and Central Altagracia, Incorporated, was properly held to constitute merely an equitable mortgage, Valdes was, nevertheless, entitled to priority over Nevers & Callaghan.

As between Valdes and Nevers & Callaghan, the former is entitled to priority, even if both claims were regarded as unsecured.

Section 1825 of the Civil Code of Porto Rico, provides:

“Section 1825.—With regard to the other personal and real property of the debtor, the following credits are preferred:

* * * * *

3. Credits which without a special privilege appear.—

A. In a public instrument.

B. In a final judgment, should they have been the object of litigation.

These credits shall have preference among themselves according to the priority of dates of the instruments and of the judgments."

Public instruments are those authenticated by a notary with the formalities required by law (Civil Code, Sec. 1184). The required formalities are prescribed by Title 3 of the Notarial Law.

The Valdes claim appears in public instruments of this character, which are set forth in the printed record; as to the Nevers & Callaghan claim, the record does not even show a written contract, much less a public instrument relating thereto.

The date of the public instruments evidencing the Valdes claim is **PRIOR** to the date of the judgment in favor of Nevers & Callaghan, and as between the two, therefore, Valdes is entitled to priority, even if both claims had been regarded as unsecured.

The loan made by Nevers & Callaghan to Central Altagracia, Incorporated, is not shown by the record to have been made under such circumstances as to constitute it a *crédito refaccionario* (see Mortgage Law, Sections 59-64; also Brooks & Co. v. Estate of Veronica Journier, Jurisprudencia Civil Tribunal Suprema de Justicia España, Vol. XLIX, p. 33), and the claim made by Nevers & Callaghan on page 21 of their brief to a preference on this ground must, therefore, fall.

The contract found by the Court below to have existed between Nevers & Callaghan and Central Altagracia, Incorporated, does not purport to create a lien upon any property of the corporation, and merely provided for the repayment of the loan by the delivery of the sugar crop of the mill for the ensuing season (Record, p. 108).

It has been held, however, that such contracts under which money is advanced to sugar centrals to

be repaid out of the proceeds of sugar to be delivered monthly by the mill to the lender, are not true "contratos de refacción" within the meaning of Section 1824 of the Civil Code of Porto Rico, and that the holders of such contracts, especially when not recorded in the Registry of Property, have only the rights of general creditors.

Fritze Lundt & Co. vs. Esperanza Central, V Porto Rico Federal Reports, 1.

Moreover, it is difficult to see how Nevers & Callaghan as creditors of Central Altagracia, Incorporated, can consistently claim a lien by reason of *refacción* upon property which they contend does not belong to the debtor, Central Altagracia, Incorporated.

Whether sound or unsound, the contention of Nevers & Callaghan that under the lease from the Sanchez estate the leasehold and other interests of Central Altagracia, Incorporated, were not transferable, does not support the Nevers & Callaghan position in this litigation. Obviously a creditor of the corporation could not levy execution upon property which the corporation could not transfer by voluntary action.

The interests of the owners of the fee are not affected one way or the other by the determination of the present litigation affecting the rights to the leasehold, and the determination of the questions pending between Valdes and Nevers & Callaghan as to their respective rights in the Central Altagracia properties can be made independently of the position which is now or may hereafter be taken by the owners of the fee in reference to the alienability of the corporation's interest in the leasehold.

Respectfully submitted,

F. KINGSBURY CURTIS,

HUGO KOHLMANN,

MARTIN TRAVIESO, Jr.,

Counsel for Ramon Valdes,

Appellee in No. 196 and

Appellant in No. 193.

VALDES *v.* CENTRAL ALTAGRACIA,
INCORPORATED.CENTRAL ALTAGRACIA *v.* VALDES.APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR PORTO RICO.

Nos. 193, 196. Submitted March 6, 1912.—Decided May 13, 1912.

The record in this case shows that the court below did not err in bringing this case to a speedy conclusion and avoiding the loss occasioned by the litigation to all concerned.

A litigant cannot, after all parties have acquiesced in the order setting the case for trial and the court has denied his request for continuance, refuse to proceed with the trial on the ground that the time to plead has not expired, and when such refusal to proceed is inconsistent with his prior attitude in the case.

The granting of a continuance is within the sound discretion of the trial court, and not subject to be reviewed on appeal except in cases of clear error and abuse; in this case the record shows that the refusal to continue on account of absence of witness was not an abuse, but a just exercise, of discretion.

Under the circumstances of this case, and in view of the existence of an equity of redemption under prior transfers, *held*, that a transfer of all the property of a corporation to one advancing money to enable it to continue its business was not a conditional sale of the property but a contract creating security for the money advanced, and on liquidation of the assets the transferee stood merely as a secured creditor.

The mere form of an instrument transferring property of a debtor cannot exclude the power of creditors to inquire into the reality and substance of a contract unrecorded although required by law to be recorded in order to be effective against third parties.

Under the general law of Porto Rico, machinery placed on property by a tenant does not become immobilized; when, however, a tenant places it there pursuant to contract that it shall belong to the owner, it becomes immobilized as to that tenant and his assigns with notice, although it does not become so as to creditors not having legal notice of the lease.

In this case, *held* that the lien of the attachment of a creditor of the tenant on machinery placed by the tenant on a sugar Central in Porto Rico is superior to the claim of the transferee of an unrecorded

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lease, even though the lease required the tenant to place the machinery on the property.

5 Porto Rico Fed. Rep. 155, affirmed.

THE facts are stated in the opinion.

Mr. F. Kingsbury Curtis, Mr. Hugo Kohlmann and Mr. Martin Travieso, Jr., for Valdes, appellant in No. 193 and appellee in No. 196.

Mr. N. B. K. Pettingill and Mr. Frederick L. Cornwell, for Central Altagracia, appellee in No. 193 and appellant in No. 196.

Mr. Francis H. Dexter for Nevers & Callaghan.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

These cases were consolidated below, tried together, a like statement of facts was made applicable to both and the court disposed of them in one opinion. We shall do likewise. Stating only things deemed to be essential as shown by the pleadings and documents annexed to them and the finding of facts made below, the case is this: Joaquin Sanchez owned in Porto Rico a tract of land of about twenty-two acres (cuerdas) on which was a sugar house containing a mill for crushing cane and an evaporating apparatus for manufacturing the juice of the cane into sugar. All of the machinery was antiquated and of a limited capacity. The establishment was known as the Central Altagracia, and Sanchez, while not a cane grower, carried on the business of a Central—that is, of acquiring cane grown by others and manufacturing it into sugar at his factory. On the eighteenth day of January, 1905, Sanchez leased his land and plant to Salvador Castello for a period of ten years. The lease gave to the tenant (Castello), the right to install in the plant "such machinery as he may deem convenient, which said machinery, at the end

of the years mentioned (the term of the lease) shall become the exclusive property" of the lessor, Sanchez. The tenant was given one year in which to begin the work of repairing and improving the plant, and it was provided that "upon the expiration of this term, if the necessary improvements shall not have been begun by him (Castello), then this contract shall be null and void, and no cause of action shall accrue to any of the contracting parties by reason thereof." Further agreeing on the subject of the improved machinery which was to be placed in the plant, the contract provided: "Upon the expiration of the term agreed on under this contract, any improvement or machinery installed in the said Central shall remain for the benefit of Don Joaquin Sanchez and Don Salvador Castello shall have no right to claim anything for the improvements made." The rental was thus provided for: "After each crop such profits as may be produced by the Central Altagracia shall be distributed and twenty-five per cent. (25%) thereof shall be immediately paid to Don Joaquin Sanchez as equivalent for the rental of said Central and of the twenty-two (22) cuerdas of land surrounding the same. The remaining seventy-five per cent. (75%) shall belong to Don Salvador Castello, who may interest therein whomsoever he may wish, either for the whole or part thereof." It was stipulated, however, that in fixing the profits no charge should be made for repairs of the existing machinery or for new machinery put in, as the entire cost of these matters was to be borne by the lessee, Castello. The lease provided, moreover, that in case of the death of Sanchez the obligations of the contract should be binding on his heirs, and in the case of the death of Castello, his brother, Gerardo Castello, should take his place "and be a contracting party if he so desired. Otherwise the plantation, in such a condition as it may be at his death, shall immediately pass into the possession of its owner, Don Joaquin Sanchez." In June,

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1905, by a supplementary contract, the lease was extended without change of its terms and conditions for an additional period of ten years, making the total term twenty years. Although executed under private signature, this lease, conformably to the laws of Porto Rico, was produced before a notary and made authentic and in such form was duly registered on the public records, as required by the Porto Rican laws.

On the first day of July, 1905, Salvador and Gerardo Castello transferred all their rights acquired under the lease, as above stated, to Frederick L. Cornwell for "the corporation to be organized under the name of Central Altagracia, of which he is the trustee." This transfer bound the corporation to all the obligations in favor of the original lessor, Sanchez, provided that the corporation should issue to Castello a certain number of paid up shares of its capital stock and a further number of shares as the output of sugar from the plant increased as the result of its enlarged capacity consequent upon the improvement of the machinery by the corporation. The lease further provided for the employment of Castello as superintendent at a salary, for a substitution of Gerardo Castello, in the event of the absence or death of his brother Salvador, and, for this reason, it is to be assumed, Gerardo made himself a party to the transfer of the lease. This transfer of the lease to the corporation was never put upon the public records. The corporation was organized under the laws of the State of Maine and under the transfer took charge of the plant. The season for grinding cane and the manufacture of sugar in Porto Rico usually commences "about the month of December of each year and terminates in the months of May, June or July of the year following, according to the amount of cane to be ground." Central factories in Porto Rico usually "make contracts with the people (colonos) growing cane so that growers of cane will deliver the same to be ground, and such contracts

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are usually made and entered into in the months of June, July and August." In other words, on the termination of one grinding season, in the months of June or July, it is usual in the ensuing August to make new contracts for the cane to be delivered in the following grinding season, which, as we have said, commences in December. The contract transferring the lease to the Central Altamaria, incorporated, was made in July, 1905, at the end, therefore, of the grinding season of that year. To what extent the corporation contracted for cane to be delivered to it for grinding during the season of 1905-6, which began in December, 1905, does not appear. It is inferable, however, that the corporation began the work of installing new machinery to give the plant a larger capacity within the year stipulated in the lease from Sanchez to Castello. We say this because it is certain that in the fall of 1906 (October) the corporation borrowed from the commercial firm of Nevers & Callaghan in New York city the sum of twenty-five thousand dollars (\$25,000) to enable the corporation to pay for new and enlarged machinery which it had ordered and which was placed in the factory in time to be used in the grinding season of 1906-7, which began in December, 1906. While such grinding season was progressing, on April 11, 1907, the corporation, through its president, under the authority of its board of directors, sold to one Ramon Valdes all its rights acquired under the lease transferred by Castello. This transfer expressly included all the machinery previously placed by the corporation in the sugar house, as well as machinery which might be thereafter installed during the term of redemption hereafter to be referred to and which, it was declared, conformably to the original lease "shall be a part of said factory for the manufacture of sugar." The consideration for the sale was stated in the contract to be "thirty-five thousand dollars (\$35,000) received by the corporation, twenty-five thousand four hundred dol-

lars (\$25,400) whereof had been paid prior to this act (of sale) and to its entire satisfaction, and the balance of nine thousand six hundred dollars (\$9,600) shall be turned over to the vendor corporation by Señor Valdes immediately upon being required to do so by the former." This sale was made subject to a right to redeem the property within a year on paying Valdes the entire amount of his debt. There was a stipulation that Valdes assumed all the obligations of the lease transferred by Castello to the company.

The undoubted purpose was not to interfere with the operation of the plant by the corporation, since there was a provision in the contract binding Valdes to lease the property to the corporation pending the period of redemption. This sale was passed in Porto Rico before a notary public, but was never put upon the public records. At the time it was made there was a very considerable sum unpaid on the debt of Nevers & Callaghan. This fact, joined with the period when the sale with the right to redeem was made, that is, the approaching end of the sugar-making season of 1906 and 1907, coupled with other facts to which we shall hereafter make reference, all tend to establish that at that time, either because insufficient capital had been put into the venture or because the business had been carried on at a loss, the affairs of the corporation were embarrassed, if it was not insolvent. A short while before the commencement of the grinding season of 1907-1908, in October, 1907, in the city of New York, the corporation, through its president, declaring himself to be authorized by the board of directors, sanctioned by a vote of the stockholders, apparently made an absolute sale of all the rights of the corporation under the lease and all its title to the machinery which the corporation had put into the plant. This sale was declared to be for a consideration of sixty-five thousand (\$65,000) dollars which the company acknowledged to have received from Valdes, first, by the payment of the thirty-

five thousand dollars cash, as stated in the previous sale made, subject to the equity of redemption, and thirty thousand (\$30,000) dollars which "the company has received afterwards in cash from Valdes." There was a provision in the contract to the effect that as the purpose of the previous contract of sale, which had been made subject to the equity of redemption, was accomplished by the new sale, the previous sale was declared to be no longer operative.

A few days afterwards, likewise in the city of New York (on November 2, 1907), Valdes sold to the company all the rights which he had acquired from it by the previous sale, the price being sixty-five thousand (\$65,000) dollars, payable in installments falling due in the years 1908, 1909, 1910 and 1911 respectively. This transfer was put in the form of a conditional sale which reserved the title in Valdes until the payment of the deferred price and upon the stipulation that any default by the corporation entitled Valdes *ipso facto* to take possession of the property. Neither this act of sale from Valdes to the corporation nor the one made by the corporation to Valdes were ever put upon the public records.

Prior to the making of the sales just stated, or about that time, the corporation defaulted in the payment of a note held by Nevers & Callaghan for a portion of the money which they had loaned the corporation under the circumstances which we have previously stated, and that firm sued in the court below the corporation to recover the debt.

The grinding season of 1907-1908 commenced in December, 1907, and was obviously not a successful one, for the debt of Nevers & Callaghan was not paid, and in May, 1908, a judgment was recovered by them against the corporation for about seventeen thousand dollars with interest, and in the same month execution was issued and levied upon the machinery in the sugar house. Previous to or not long subsequent to the time Nevers & Cal-

laghan commenced their suit, the precise date not being stated in the record, the heirs of Sanchez, the original lessor, brought a suit in the court below against the corporation. The nature of the suit and the relief sought is not disclosed, but it is inferable from the facts stated that the suit either sought to recover the property on the ground that there was no power in Castello to transfer the lease, or upon the ground of default in the conditions as to payment of profits as rental which the lease stipulated. It would seem also at about the same time either one or both of the Castellos brought a suit against the company, presumably upon the theory that there had been a default in the obligations assumed in their favor by the corporation at the time it took the transfer of the lease. In the meanwhile also, probably as the result of the want of success of the corporation, discord arose between its stockholders and a suit growing out of that state of things was brought in the lower court.

This litigation was commenced in June, 1908, by the bringing by Valdes of an action at law in the court below to recover the plant on the ground that by the default in paying one of the installments of the price stated in the conditional sale, the right to the relief prayed had arisen. On the same day Valdes commenced a suit in equity against the corporation in aid of the suit at law. The bill alleged the default of the corporation, the bringing of the suit at law, the confusion in the affairs of the corporation, the judgment and levy of the execution by Nevers & Callaghan, and the threat to sell the machinery under such execution; the refusal of the corporation to deliver possession of the property, the waste and destruction of the value of the property which would result if there was no one representing the corporation having power to contract for cane to be delivered during the next grinding season, etc., etc. The prayer was for the appointment of a receiver to take charge of the property with au-

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thority to carry on the same, make the necessary contracts for cane for the future, it being prayed that the receiver should be empowered to issue receiver's certificates to the extent necessary to the accomplishment of the purposes which the bill had in view.

On the same day a bill was filed on behalf of the corporation against Valdes. This bill attacked the sale made to Valdes and by him to the corporation. It was charged that the price stated to have been paid by Valdes as a consideration of the conditional sale was fictitious, and that the only sum he had advanced at that time was the thirty-five thousand dollars which it was the purpose to secure by means of the sale with the equity of redemption. That at that time Valdes exacted as a consideration for his loan that he be made a director and vice-president of the company. The bill then stated that it having become evident in the following autumn that the corporation would require more money to increase its plant, to pay off the sum due Nevers & Callaghan, and for the operation of the plant, Valdes agreed to advance the money if he were made president of the company at a stipulated salary, given a bonus in the stock of the company and upon the condition that the papers be executed embodying the so-called sale of the company to Valdes and the practically simultaneous conditional sale by Valdes to the company. The bill then alleged that Valdes, having thus become the president of the company, failed to carry out his agreement to advance the money, failed to provide for the debt of Nevers & Callaghan, mismanaged the affairs of the property in many alleged particulars, and did various acts to the prejudice of the company and to his own wrongful enrichment, which it is unnecessary to recapitulate. The necessity of contracting for cane during the contract season, in order that the plant might continue during the next operating season to be a going concern and the waste and loss which would otherwise

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be occasioned, were fully alleged. Valdes and the firm of Nevers & Callaghan and the individual members of that firm were made defendants. The prayer was for the appointment of a receiver and with power to carry on the business of the Central, with power for that purpose to contract for cane for the coming season, with authority to issue receiver's certificates for the purpose of borrowing the money which might be required.

The judge being about to leave Porto Rico for a brief period, declined to appoint a permanent receiver, but named a temporary one to keep the property together until a further hearing could be had, interference in the meanwhile with the custodian being enjoined. Shortly thereafter creditors of the corporation intervened and joined in the prayer made by both of the complainants for the appointment of a receiver. In July the two suits were by order consolidated and after a hearing a receiver was appointed and authority given him to continue the property as a going concern and to borrow a limited amount of money on receiver's certificates if necessary to secure contracts for cane for the coming crop season. The execution of the Nevers & Callaghan judgment was stayed pending an appeal which had been taken to this court. The only difference which seems to have arisen concerning the appointment of the receiver grew out of the fact that a prayer of the Central Altagracia, asking the court to appoint as receiver Mr. Pettingill, a member of the bar and one of the counsel of the corporation, and who was also its treasurer, was denied. Despite this, the fair inference is that the ultimate action of the court was not objected to by anyone, because of the hope that the result of a successful operation of the plant during the coming crop season might ameliorate the affairs of the corporation and thus prevent further controversies. We say this, not only because of the conduct of the parties prior to the order appointing the receiver, but because

after that order the solicitors of the Altamaria Company and Valdes put a stipulation of record that until the following October no steps whatever should be taken in the proceedings, and not even then unless the attorneys for both parties should be in Porto Rico.

The hope of a beneficial result from the operation of the plant by the receiver proved delusive. As a result of such operation there was a considerable loss represented by outstanding receiver's certificates, with no means of paying except out of the property. Obviously, for this reason, the record contains a statement that on July 12, 1909, a conference was had between the court and all parties concerned to determine what steps should be taken to meet the situation. It appears that at that conference the counsel representing the heirs of Sanchez and of Nevers & Callaghan stated their opposition to a continuance of the receivership.

On July 17, 1909, the court placed a memorandum on the files indicating its purpose to bring the litigation, receivership, etc., to an end and to cause "immediate issue to be raised on the pleadings for that purpose." This memorandum was entitled in all the pending causes concerning the property. It directed that demurrers which had been filed in the consolidated cause of Valdes against the corporation and of the corporation against Valdes be overruled, and the defendants were required to answer on or before Monday, July 26, in order that upon the following day, the twenty-seventh of July, the issues raised might be tried before the court without the intervention of a master. It was provided in the order, however, that nothing in this direction should prevent the parties from filing such additional pleadings as it is deemed necessary for the protection of their rights by way of cross bill or amendment, etc. To make the order efficacious it was declared that nothing would be done in the suit of the heirs of Sanchez against Castello and the Altamaria

which was pending on appeal, and that a demurrer filed to the suit of Castello against the Central would be overruled; that the demurrer in the suit at law of Valdes would remain in abeyance to await the final action of the court on the trial of all the issues in the equity causes and that a stay of the Nevers & Callaghan execution would be also disposed of when the equity cases came to be decided. This order was followed by a memorandum opinion filed on July the 21st stating very fully the position of the respective suits, the necessity for action in order to preserve the property from waste and reiterating the view that whatever might be the rights of the Central Altagracia or of Valdes under the lease, those rights would be subordinate to the ultimate determination of the suit brought by the heirs of Sanchez. To the action of the court, as above stated, no objection appears to have been made. On the contrary, between the time of that order and the period fixed for the commencement of a hearing the Central Altagracia, Valdes and Nevers & Callaghan modified their pleadings to the extent deemed by them necessary to present for trial the issues upon which they relied. In the case of the Central Altagracia this was done by filing on July 22 an amended bill of complaint in its suit against Valdes and on July 26 its answer in the suit of Valdes. The acceptance by Valdes of the terms of the order was shown by an answer filed to the bill in the suit of the company and the cross bill in the same cause; and Nevers & Callaghan manifested their acquiescence by obtaining leave to make themselves parties and asserting their rights by cross bill and answers, which it is unnecessary to detail.

When the consolidated cause was called for trial on the morning of July 27, the counsel for the Central Altagracia moved a continuance in order to take the testimony of certain witnesses in Philadelphia and New York for the purpose of proving some of the allegations of the complaint

as to the wrongdoing of Valdes in administering the affairs of the corporation. This application was supported by the affidavit of Mr. Pettingill, the counsel of the corporation. The record states that the request for continuance was opposed by all the other counsel, and the application was denied. In doing so the court stated "that the matter has been pending for more than a year and that counsel had full notice of the court's intention to press the matter to issue and trial and that it is not disposed to delay matters at this time when the admissions of the pleadings are so broad that the proofs available here in Porto Rico are probably sufficient and the amended complaint already on file in suit No. 565—*Valdes v. The Altamaria Company*—and the answer thereto and the answer recently filed in suit No. 564—*Altamaria Company v. Valdes*—as well as the cross bill also recently filed in suit No. 465 makes so many allegations and admissions as that the real issue between the parties can be plainly seen and that, in the opinion of the court, enough proof is available here in Porto Rico." The court thereupon declared that the Altamaria Company might by the next day, if it so desired, file exceptions to the answer in suit 565 and an answer to the cross complaint, indeed—that the corporation might, if it wished, treat them as filed and proceed with the cause and file them at any convenient time thereafter. Thereupon the record states: "Said counsel for the Central Altamaria stated that he desired time to file exceptions to the answer and an answer to the cross bill in suit No. 565; and the court granted until the morning of July 28 for such purpose. Later in the day of July 27, one of the counsel for Valdes having requested the court to postpone the hearing of the cause until the morning of the 29th, because of an unexpected professional engagement elsewhere, the request was communicated by the court to the other counsel in the cause. Thereupon the record again recites, "Messrs. Pettingill &

Cornwell, attorneys for the Central Altagracia, stated that they withdrew any statement they have hitherto made in the cause in that regard and desired to be understood that they would not except to the answer in suit No. 565 or plead or answer to the cross bill therein save and except within the time which they contended the rules governing this court of equity gave them and would stand upon what they considered their rights in that regard." When the court assembled the next day, on the morning of the 28th, a statement concerning the occurrence of the previous day as to the continuance, etc., just reviewed, was read by the court in the presence of all the counsel, whereupon the record recites, "N. B. Pettingill, counsel for the Central Altagracia, in response to the same stated that he objected to proceeding to take any evidence in any of the causes at that time or the testimony of any witnesses because the same was not at issue or in condition for the taking of evidence and objected to the taking of such evidence until the issues of said causes are made up in accordance with the rules of practice applicable to equity causes." The record further recites, "which objection was overruled by the court on the ground that the action called for thereby is not necessary. That the bill was amended within three days; an answer was immediately filed to it and a cross bill also filed, the said cross bill making only the same claims as were made in suit No. 563 at law, and that any way the issue could be tried on the bill and answer in both suits. . . ." This ruling of the court having been excepted to the trial proceeded from day to day, the counsel for the Central Altagracia taking no part in the same and virtually treating the proceedings as though they did not concern that corporation.

In substance, the court decided: First, that as the result of the contracts between Valdes and the Central Altagracia, he was not the owner of the rights of that corporation under the lease, or of the machinery which

had been placed in the sugar house by the Altagracia Company or of the other assets of the corporation, but that he was merely a secured creditor. The sum of the secured debt was fixed after making allowances for some not very material credits which the corporation was held to be entitled to. Second, that the judgment in favor of Nevers & Callaghan was valid and that that firm by virtue of its execution and levy upon the machinery had a prior right to Valdes. Third, the sums due to various creditors of the corporation were fixed and the equities or priorities were classified as follows: *a*. Taxes due by the corporation and the sum of the receiver's certificates and certain costs; *b*. The judgment of Nevers & Callaghan, and *c*. The debt of Valdes; *d*. Debts due the other creditors. Without going into details it suffices to say that for the purpose of enforcing these conclusions the decree directed a sale of all the rights of the Central Altagracia in and to the lease, machinery, contract, etc., and imposed the duty upon Valdes, if he became the purchaser, to pay enough cash to discharge the costs, taxes, receiver's certificates and the claim of Nevers & Callaghan.

These appeals were then prosecuted, the one by the Central Altagracia and the other by Valdes. We shall endeavor as briefly as may be to dispose of the contentions relied upon to secure a reversal.

I. *The Central Altagracia Appeal.*—The alleged errors insisted on in behalf of that company relate to the asserted arbitrary action of the court in forcing the cause to trial without affording the time which it is insisted the corporation was entitled to under the equity rules applicable to the subject, and, second, the refusal of the court to grant a continuance upon the affidavit as to the absence of material witnesses.

We think all the contentions on this subject are demonstrated to be devoid of merit by the statement of the case which we have made. In the first place, it is mani-

fest from that statement that the proceeding leading up to the appointment of a receiver and the power given to administer the property was largely the result of the assent of the corporation. In the second place, when the unsuccessful financial issue of the receivership had become manifest we think the statement makes it perfectly clear that the steps taken by the court for the purpose of bringing the case to a speedy conclusion, and thus avoiding the further loss which would result to all interests concerned, were also acquiesced in by all the parties in interest who complied with the terms of that order and took advantage of the rights which it conferred. We think also the statement makes it apparent that the refusal on the part of the corporation to proceed with the trial, upon the theory that the time to plead allowed by the equity rules had not elapsed, was the result of a change of view because of the action of the court in refusing the continuance on account of the absent witnesses—a change of front which was inconsistent with the rights which the corporation had exercised in accord with the order setting the cause for trial and with the rights of all the other parties to the cause which had arisen from that order and from the virtual approval of it, or at least acquiescence in it, by all concerned.

Considering the assignments of error in so far as they relate alone to overruling of the application for continuance based upon the absence of witnesses, it suffices to say that the elementary rule is that the granting of a continuance of the cause was peculiarly within the sound discretion of the court below, a discretion not subject to be reviewed on appeal except in case of such clear error as to amount to a plain abuse springing from an arbitrary exercise of power. Instead of coming within this latter category, we think the facts as to the refusal to continue and the conduct of the parties make it clear that there was not only no abuse but a just exercise of discretion.

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II. *As to the Appeal of Valdes.*—Two propositions are relied upon, first that error was committed in treating Valdes merely as a secured creditor, and in not holding him to be the absolute owner of the rights and property alleged to have been transferred by the so-called conditional sale. Second. That in any event error was committed in awarding to Nevers & Callaghan priority over Valdes.

The first proposition is supported by a reference to the Porto Rican Code and decisions of the Supreme Court of Spain and the opinions of Spanish law writers. But the contention is not relevant, and the authorities cited to sustain it are inapposite to the case to be here decided, because the argument rests upon an imaginary premise, that is, that the ruling of the court below denied the right under the Spanish law to make a conditional sale or held that such a sale if made would not have the effect which the argument insists it was entitled to. This is true because the action of the court was solely based upon a premise of fact, viz., that under the circumstances of the case and in view of the prior sale with the equity of redemption, the cancellation of that sale and the transfer made by the corporation to Valdes and the immediate transfer of the same rights by him to the corporation in the form of a conditional sale, the failure to register any of the contracts, and the relation of Valdes to the corporation at the time the contracts were made it resulted that whatever might be the mere form, in substance and effect no conditional sale was made but a mere contract was entered into which the parties intended to be a mere security to Valdes for money advanced and to be advanced by him. This being the case it is manifest that it is wholly irrelevant to argue that error was committed in not applying the assumed principles of the Porto Rican and Spanish law governing in the case of a conditional sale, when the ruling which the court made proceeded upon the conclusion that there was no conditional sale.

The contention that under the Porto Rican law the form was controlling because proof of the substance was not admissible seems not to have been raised below, but if it had been is obviously without merit, as the case as presented involved not a controversy alone between the parties to the contract, but the effect and operation of the contract upon third parties, the creditors of the corporation. The contention is additionally without merit, since it assumes that the mere form of the contract excluded the power of creditors to inquire into its reality and substance even although the contract was never inscribed upon the public records so as to bind third parties. That its character was such as to require inscription we shall in a few moments demonstrate in coming to consider the second proposition, that is, upon the hypothesis that Valdes was but a secured creditor, was error committed in subordinating his claim to the prior claim of Nevers & Callaghan under their judgment and execution.

To determine this question involves fixing the nature and character of the property from the point of view of the rights of Valdes and its nature and character from the point of view of Nevers & Callaghan as a judgment creditor of the Altagracia Company and the rights derived by them from the execution levied on the machinery placed by the corporation in the plant. Following the Code Napoleon, the Porto Rican Code treats as immovable (real) property, not only land and buildings, but also attributes immovability in some cases to property of a movable nature, that is, personal property, because of the destination to which it is applied. "Things," says § 334 of the Porto Rican Code, "may be immovable either by their own nature or by their destination or the object to which they are applicable." Numerous illustrations are given in the fifth subdivision of section 335, which is as follows: "Machinery, vessels, instruments or

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implements intended by the owner of the tenements for the industry or works that they may carry on in any building or upon any land and which tend directly to meet the needs of the said industry or works." See also Code Nap., articles 516, 518 *et seq.* to and inclusive of article 534, recapitulating the things which, though in themselves movable, may be immobilized. So far as the subject-matter with which we are dealing—machinery placed in the plant—it is plain, both under the provisions of the Porto Rican law and of the Code Napoleon, that machinery which is movable in its nature only becomes immobilized when placed in a plant by the owner of the property or plant. Such result would not be accomplished, therefore, by the placing of machinery in a plant by a tenant or a usufructuary or any person having only a temporary right. Demolombe, Tit. 9, No. 203; Aubry et Rau, Tit. 2, p. 12, § 164; Laurent, Tit. 5, No. 447; and decisions quoted in Fuzier-Herman ed. Code Napoleon under articles 522 *et seq.* The distinction rests, as pointed out by Demolombe, upon the fact that one only having a temporary right to the possession or enjoyment of property is not presumed by the law to have applied movable property belonging to him so as to deprive him of it by causing it by an act of immobilization to become the property of another. It follows that abstractly speaking the machinery put by the Altamaria Company in the plant belonging to Sanchez did not lose its character of movable property and become immovable by destination. But in the concrete immobilization took place because of the express provisions of the lease under which the Altamaria held, since the lease in substance required the putting in of improved machinery, deprived the tenant of any right to charge against the lessor the cost of such machinery, and it was expressly stipulated that the machinery so put in should become a part of the plant belonging to the owner without compensation to the lessee.

Under such conditions the tenant in putting in the machinery was acting but as the agent of the owner in compliance with the obligations resting upon him, and the immobilization of the machinery which resulted arose in legal effect from the act of the owner in giving by contract a permanent destination to the machinery. It is true, says Aubry and Rau, vol. 2, § 164, par. 2, p. 12, that "The immobilization with which the article is concerned can only arise from an act of the owner himself or his representative. Hence the objects which are dedicated to the use of a piece of land or a building by a lessee cannot be considered as having become immovable by destination except in the case where they have been applied for account of the proprietor or in execution of an obligation imposed by the lease." It follows that the machinery placed by the corporation in the plant, by the fact of its being so placed lost its character as a movable and became united with and a part of the plant as an immovable by destination. It also follows that as to Valdes, who claimed under the lease, and who had expressly assumed the obligations of the lease, the machinery for all the purposes of the exercise of his rights, was but a part of the real estate, a conclusion which cannot be avoided without saying that Valdes could at one and the same time assert the existence in himself of rights and yet repudiate the obligations resulting from the rights thus asserted.

Nevers and Callaghan were creditors of the corporation. They were not parties to nor had they legal notice of the lease and its conditions from which alone it arose that machinery put in the premises by the Altagracia became immovable property. The want of notice arose from the failure to record the transfer from Castello to the Altagracia or from the Altagracia to Valdes, and from Valdes apparently conditionally back to the corporation, a clear result of § 613 of the Civil Code of Porto Rico, providing, "The titles of ownership or of other real rights relating

to immovables which are not properly inscribed or annotated in the registry of property, shall not be prejudicial to third persons." It is not disputable that the duty to inscribe the lease by necessary implication resulted from the general provisions of article 2 of the mortgage law of Porto Rico, as stated in paragraphs 1, 2 and 3 thereof, and explicitly also arose from the express requirement of paragraph 6 relating to the registry of "contracts for the lease of real property for a period exceeding six years . . ." It is true that in a strict sense the contracts between Castello and the Altamaria Company and with Valdes were not contracts of lease but for the transfer of a contract of that character. But such a transfer was clearly a contract concerning real rights to immovable property within the purview of art. 613 of the Civil Code just previously quoted. Especially is this the case in view of the stipulations of the lease as to the immobilization of movable property placed in the plant and the other obligations imposed upon the lessee. "The sale which a lessee makes to a third person to whom he transfers his right of lease is the sale of an immovable right and not simply a sale of a movable one." See numerous decisions of the courts of France, beginning with the decision on February 2, 1842, of the Court of Cassation [Journal du Palais (1842), vol. 1, 171]. See also numerous authorities collected under the heading above stated in paragraph 21, under articles 516, 517 and 518 of the Code Napoleon. Fuzier-Herman ed. of that Code, p. 643.

The machinery levied upon by Nevers & Callaghan, that is, that which was placed in the plant by the Altamaria Company, being, as regards Nevers & Callaghan, movable property, it follows that they had the right to levy on it under the execution upon the judgment in their favor, and the exercise of that right did not in a legal sense conflict with the claim of Valdes, since as to him the property was a part of the realty which, as the result

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of his obligations under the lease, he could not, for the purpose of collecting his debt, proceed separately against.

As a matter of precaution we say that nothing we have said affects the rights whatever they may be of the heirs of Sanchez, the original lessor.

Affirmed.
